INSTITVTIONS,

OR

Principall grounds of the Lawes and ſtatutes of *England.*

Newly and very truely corrected and a*mended, with many new and good additi*ons: very profitable for all ſorts of people to know, lately augmented and *Imprinted.*

AT LONDON
Printed for the company of Stationers.
1611. f

Cum Priuilegio.

The Prologue of the Author, to the *Reader.*

Emoſthenes the renowned Orator, defineth Law in this wiſe. The Law (ſaith hee) is the thing that al men ought to obey for many cauſes, but eſpecially eſpecially becauſe law is the inuention, and alſo the gift of God, the decrees of prudent men, the chaſticement of offences, and finally the common ſuerty of a Realme, whereby it becommeth all men to liue, which be conuerſant in the ſame. Chriſippus alſo, an excellent Philoſopher, thus beginneth his booke of lawes. The Law is king of all, as well diuine as humaine affaires, the preſident and controuler of things honeſt and diſhoneſt, the Prince, the Captaine and the ruler of the iuſt and vniuſt, and it is of ciuill creatures, aſwell the commander what they ought to doe, as the forbidder what they ought not to doe. Theſe authentike ſayings of wiſe men, aſſuredly ought much to inflame vs to the knowledge of theſe things without which we ſhall be eſteemed as no men, but as brute and ſauage beaſts. Let vs not commit that, that it bee ſaid of Engliſhmen, as it was once ſaid of the men of Athens, that is, that we make very good and profitable laws, but we vſe them not. Certainly there can be no greater reproch to a

common weale, then this. One leſſon I would we learned of the ancient Romane lawyer named Celſus, & that is this: the knowledge of law is not to bear away the words, but the pith and power of them. This is written, becauſe there be many which when good & holeſome lawes be made, ſeek not to ſee them executed, & obſerued, but rather how to defraud thé & to haue them vnexecuted: which kind of people after the ſentence of moſt ancient Lawmakers, be no leſſe worthy of reprehenſion then they which do expreſly againſt the law. Now they doe (ſay they) againſt the Law, which do the thing which the law forbiddeth. And they defraud a Law or Statute, which, the words of the Law ſaued, doe peruert the meaning and ſenſe of it.

Let vs then ſo reade the Law, that wee may beare away the ſenſe and meaning of them, and ſo fulfil and obſerue the lawes, that it may appeare, that they were not made in vaine. Thus doing wee ſhall pleaſe God, we ſhal be obedient ſubiects to our Prince. And finally, we ſhall ſeeke our owne weale and ſafetie.

(***)

What

What is Lawe. Chap. 1.

The Law is the direction and ministration of Justice. And Justice is (as the Emperour Iustinian saith in his Institutions) a constant and permanent will, to render vnto euery person his right and dutie. The learning or prudence of law, is a knowledge of diuine and humane things, a science and perfect notice of equity, & iniquity, of right or wrong.

Now forasmuch as a great portion of the prudence, or science of the lawes of this realm of England, consisteth in the perfect knowledge of Estates, which men haue in lands and tenements, wee shall first as compendiously, and as simply and plainly as we can, treate somewhat of estates.

A diuision of Estates. Chap. 2.

We shall therefore vnderstand, that whosoeuer hath any estate in landes or tenements, either he hath in the same onely a chattell, or free-hold, or an inheritance. If hee hath an estate but for terme of certain years, or at his lādlords will, then it is called a chattell, if for terme of his life, or for another mans life, it is called a freehold. And if he hath to him and to his heires in fee simple, or in taile, then hee hath an estate of inheritance.

Chattel.

Freehold.

Inheritance.

Tenant for terme of yeares. Chap 3.

A Tenant for terme of yeares, is hee to whom landes or tenements be let for terme of certaine

taine yeares as is agréed betweéne the Landlord and the tenant. And when the person to whom such lease is made, doth enter by force of the said lease, & is in possession of the same, then he is called a tenant for terme of yeares.

Rent reserued.

And heére ye shall note, that if the lessor that made the lease, hath reserued vnto him a yearely rent vpon the said lease, as is accustomably vsed to be done, if the rent bee behinde and vnpaid, it shall be in his election, either to enter & distraine for the rent, or to bring an action of debt against the tenant for the arrerages of the same. But in this case it is requisite, that the lessour were seised of the lands or tenements at the time of the making of the lease, for otherwise it shal be a good plee in the action of debt, for the tenant, to say the lessour had nothing in the landes & tenements at the time of the lease made, except the Lease were made by deede indented, for then this plée shall not be in the Tenaunts mouth to plead.

Action of debt.

A good plee.

Liuery of seisō needeth not in a lease for term of yeares.

And it is to be knowne, that in a Lease for terme of yeares, whether it be by déed, or without deede, there neede no liuery of seison to bee made to the lessée, but he may enter when he will by vertue of his Lease, without any further ceremonie of the law.

And if a man leaseth Landes for terme of yeares, though the lessour chanceth to die before the lessee doth enter, yet hee may enter well enough: Otherwise it is where liuery of seisō is to be made, as in freeholds and inheritances.

Waste.

And if the tenaunt for yeares doth waste, the Landlord may bring an action of waste against him

him and shall recouer the place wasted, and his trebble damages.

Also if a lease for yeares be made of two seuerall things, and after the one is recouered, the lessee shall hold the other, and the rent or farme shall be apportioned. M. 12. H. 8.

Also if the tenant for yeares graunteth a greater estate in the land, then he hath himselfe, whereby he conueieth the fee simple to himselfe, he shall forfeit his lease or terme. Forfaiture

Tenant at will. Chap. 2.

TEnant at will, is hee, to whome lands or tenements bee leased to haue and to holde the same at the will of the lessour. And in this case the lessour may put out his tenant at what time him listeth. But yet neuertheless, if the tenant haue sowed the groundes with Corne, in this case if the lessour will enter and put out his tenant before harueste, the law will giue him free comming and going to reape and carry his Corne away, without any punishment or damages to bee sustained for his so doing, because hee knew not at what time the lessour would enter. But otherwise it is of tenant for term of certain yeares, for if he soweth the ground, and his terme of his lease bee come out and expire before the corne be ripe, in this case the lessour or he in the reuersion may enter and take the Corne, because it was the folly of the tenant to sow the ground, knowing the end of his terme.

In like wise, tenant at will shall haue free comming & going after the time of the lessours

entrie, to carry away his houshold stuffe & goods for a reasonable space.

Ye shal also vnderstand, that he that maketh a lease at will, may reserue an annuall or yearly rent, in which case if the rent be behind, he may enter very well, and distraine the goods and chatels of the tenant, or at his election hee may bring an action of debt against him.

Distres, or action of Debt.

Also it is to be knowne, that tenant at will of a house or tenement is not bound by the order of the law to sustaine, and repaire the houses that be decaied and ruinous, as is the tenant for yeares, and therefore no action of wast lieth against him: yet if he will doe wilfull wast, as if he plucketh downe the houses, or cutteth down the trees: it hath been thought by the Sages of the law, that the lessour may bring an action of Trespasse against him, and shall recouer his losses thereby sustained

Waste.

Trespasse

And if such a tenant die, and his heir enter, in that case the lessour may haue an action of Trespasse against the heire for his entry.

Tenant by Copy of Court roll. Chap. 5.

There is another kind of tenant at will, which is called Tenant by Copie of the Court Rolles And this is, when a man is seised of a mannour, within which it hath beene vsed time out of mind, that the tenants within the bounds and precinct of the said manour, haue holden lands & tenements to them, and to their heires in fee simple, fee tayle, or for terme of life, at the will of the Lord, according the custome of the manour. And such a tenant

tenant cannot alien or ſell his land by his deed, for if he do, the land or tenement that is ſo alienated and ſold, is forfait into the Lords hands, but if hee will alien his coppheld land to another, he muſt according to the cuſtome, come into the Lords court, and there ſurrender it into the Lords hand, to the behoofe and vſe of him that ſhall haue the eſtate. The forme of which ſurrender is commonly vſed to be thus. Surréder.

Ad hanc Cũriam venit A. de B. & ſurſum reddidit in eadem curia vnũ meſuagium, &c. in manus domini, ad vſum C. de D. & heredum ſuorum, vel heredum de corpore &c, Et ſuper hoc venit prædictus C. de D. & cepit de domino in eadem curia meſuagium predictum: Habendum & tenendum ſibi, &c. advoluntatem domini ſecundum conſuetudinẽ manerii, faciend' inde redditus, ſeruicia, & conſuetudines inde prius debitas & conſuetas, &c. Et dat domino pro fine, &c. Et fecit domino fidelitatem. The form of a ſurrẽder.

These as I ſaid be called Tenants by Copy of Court roll, becauſe they haue none other euidence to ſhew concerning their lands, ſaue only the copies of the rols of their Lords court.

Neither can theſe tenants ſue or be ſued for ſuch Lands in the Kings Court, by writ or otherwiſe. But if they will in any wiſe implead or ſue others for ſuch copie lands, they muſt doe it by way of plaint in the Lordes Court after this forme.

A. de B. quæritur verſus C de D. de placito terrę, videlicet, de vno meſuagio, 40. acris terræ, 4. acris prati, &c. cũ pertinẽtijs, & facit proteſtationẽ ſequi quęrelã iſtã in natura breuis dõ. Regis The forme of the plaint.

Regis assisę mortis antecessoris ad cõmunẽ legem Pol' &c. Plegij de prosequendo F.O. &c.

Now although some such tenants haue an inheritance according to the custome of the manour, yet in very deed they are but tenants at the will of the Lord. For as some men thinke, if the Lord will expell them, & put them worth, they haue no remedie at al, but to sue vnto their Lord by way of petition, desiring him to bee good and gracious Lorde vnto them. For if they might haue any remedie by the Law, then should they not be called (say they) tenants at the will of the Lord after the custome of ỹ manour. But other men of no lesse learning and prudence, haue bẽn of contrary iudgement, as Lord Brian chiefe Iustice, in the time of King Edward the fourth, whose opiniõ was alwaies that if such a tenant by the custome (paying his seruices) bee ejected and put foorth by his Lord without cause reasonable, hee may very well bring and maintaine an action of trespasse against the Lord at the common Lawe, as appeareth termino Hillarij, An. 21. E. 4. Also Lord Danby chiefe Iustice likewise, was of the same iudgement, as appeareth termino Mich. an 7. E. 4. where he saith, that the tenant by the Custome, is as well inheritable to haue his lãd after the custome, as he is that hath a freehold at the common Law: but the determinatiõ of this question, I remit to my great maisters, which can loose the knots & ambiguities of the Law. Forasmuch as yet stil of this matter, Causidici certant, & adhuc sub Iudice lis est.

Action of Trespasse.

Also ye shall vnderstand, that the vsage of some

ſome manour is, when the tenant will ſurrender his land to the vſe of another, that he ſhall take a wand or a rod in his hand, and deliuer it to the ſteward of the court, and the ſteward ſhal deliuer the ſame wand in name of ſeiſin, to him that ſhall take the land, and ſuch a tenant is called a tenant by the verge. Diuers other cuſtomes there be of ſurrendring of Copie holde landes, which herefor tediouſneſſe I will omit. And forasmuch as tenants by cuſtome of the Manour, haue by the courſe of the common law no freehold: therfore they be called tenants of baſe tenure. Baſe tenure.

Alſo if ſuch a tenant letteth to farme his copy hold land for longer time then a twelue moneth and a day, without the Lords licence, it is a forfaiture of his land to his Lord.

And know ye, that if this tenant fell any timber that groweth vpon the Land, but onely for the reparation of the ſame, this is waſt and a forfaiture of his Copie hold.

Hither to haue I treated of the firſt member of our diuiſion, that is to wit of chattels: for as I ſaid, all leaſes for terme of yeeres, and at will, be accounted in the law, but as chattels, and be compriſed vnder that name, ſaue that theſe bee called chattels reals: whereas Kine, Oxen, Horſes, money, plate, corne, and ſuch like, bee called chattels perſonals. Chattels reall and perſonall.

Now we will proceed to the explanation of the ſecond member, that is to ſay, of Free-

holds.

Free

FRéeholds or franke tenements a man may haue in sundrie wise, for either hee is seised for terme of his owne life, or for terme of another mans life. If he bee seised for terme of his owne life, either he hath gotten such estate by way of purchase, or else the law hath intituled them thereunto I call it by purchase, whether he commeth vnto it by his owne bargayning & procurement, or by the gift of his friend: & I call it by the operation or intituling of the Law, when a man marrieth a woman that is an inheritrix, and hath issue by her, & she dieth, now shall he haue the lands during his life, by course of the Law, and shal be called tenant by the curtesie of England.

Tenant by the curtesie.

In like wise, if a man be seised in fée simple, or fée taile of lands, and taketh a wife, and hee dieth, the law giueth vnto the wife the third part of her husbands lands for terme of life, & she shall be called tenant in dower.

Tenant in dower.

Tenant for terme of life. Chap 7.

TEnant for terme of life, is hee that holdeth lands or tenements for terme of his owne life, or for terme of an others life. Howbeit the most frequent and common manner of speaking is, to call him that hath an estate for term of his owne life, tenant for life, and him that hath an estate for terme of an others life, tenant for terme dauter vie, that is to say, tenant for terme of an others life.

Ye shall note, that like as he that maketh the lease is called the lessour, and hee to whom the lease

lease is made, is called the lessee, so he that maketh a feoffement, is called the feoffor, and he to whom the feoffement is made, the feoffee.

Also if the tenant for terme of life, or tenant for terme of another mans life, doe waste, the lessor, or he in the reuersion, shall maintaine very well an action of waste against him, and shall by the same recouer trebble damages. Waste.

Finally, ye shall vnderstand, that by an act of Parliament made in the 27. yeare of our Soueraigne Lord King Henry the eight, it is enacted, that no free-hold, nor estate of inheritance, shall passe nor take effect by reason of any bargaine and sale, except that same bee made by writing indented, sealed and enrolled in one of the Kings Maiesties Courtes at Westminster, or else within the county where the land doth lie, before the Custos Rotulorum, and two Iustices of Peace, and the Clerke of the Peace of the same Countie, or two of them at least, of which the said Clerke shall be one, & that such enrolment be made, within fiue moneths after the date of such writing. And for the enrolment of euery such writing, where the land compriſed therein, is not aboue the yeerly value of forty shillings, they shall take two shillings, that is, twelue pence to the Iustices, and twelue pence to the Clerke And if the land be aboue the yearely value of xl.s. then they shal take v.s. that is, xl.s and vi.d. to the Iustices, and xl.s. vi.d. to the the Clerke, which shall inroll and ingrosse sufficiently in Parchment such deedes and writings, and at eueris yeeres end he shal deliuer the same to the custos

Rotulorum

Rotulorum of the ſame county, to remain in his cuſtodie among other recoꝛds of the ſame countie, ſo that the parties reſoꝛting thither may ſée them. Pꝛouided, that this extend not to any tenements oꝛ hereditaments lying within any citie oꝛ towne coꝛpoꝛate, wherin the Maioꝛs, recoꝛders, oꝛ other officers haue authoꝛitie, oꝛ haue lawfully vſed to enroll any euidences oꝛ writings within their pꝛecinct.

Tenant by the curteſie. Chap. 8.

TEnant by the curteſie of England, is hee that hath maried a wife inheritrix, & hath had iſſue by her, & ſhée is dead, in this caſe the Law of England permitteth and ſuffereth the husband of ſuch wife, to receiue & kéepe ſtill al his wiues land, that ſhe had either in fée ſimple, oꝛ fée taile, ſo long as he liueth. And this is by the curteſie, & vꝛbanity of England, foꝛ this thing is vſed in none other country noꝛ region. But in this, it is required that the child be vitall, that is to ſay, be boꝛne and bꝛought foꝛth into this wꝛld aliue: and theꝛefoꝛe the common ſaying is, and hath beéne, that vnleſſe the child be heard cry, the father ſhall not be tenaunt by the curteſie, foꝛ the onely pꝛoofe and argument of life in an infant boꝛne, is the vagite and cryeing. Yee ſhall furthermoꝛe vnderſtand, that vnleſſe the husband bée in actuall & reall poſſeſſion of his wiues landes, and ſeiſed of them in her right, he ſhall not bee tenant by the curteſie after her death. And theꝛefoꝛe if landes deſcend to a mans wife, ſo that ſhe is tenant in the law, & to euery mans actions, yet if the husbād haue not

not made an actuall entrie during couerture and matrimony betweene them, he ſhal not bee tenant by the curteſie, for it ſhall bee reputed and iudged his folly and negligence that hee would not enter in her life time.

Otherwiſe it is of auowſons, rents, commons, and ſuch other things, which forthwith when they deſcend, be in a man, or in a woman, without any entry or further ceremony of law.

Note, that if tenant by the curteſie of England, will ſuffer, or make any waſt in the lands or tenements that he ſo holdeth, hee is puniſhable therefore, by action of waſt brought by him in the reuerſion.

Alſo it is to be knowne, that of things that be in ſuſpence, a man ſhall not be tenant by the curteſie, and therefore if a man be tenant in fée ſimple of certaine land, & doth intermary with a woman that is the Segnioreſſe or Lady of ỹ ſame, and hath iſſue by her, & ſhee dieth, yet ſhal he not be tenant by the curteſie of the Lordſhip or Segniory, becauſe himſelfe is tenant of the land, & therefore the Lordſhip is ſuſpended for the time; for a man cannot be both Lord and tenant of one thing: but if he had not beene tenant of ỹ land, he ſhould haue had the Lordſhip after the death of his wife, by the curteſie of England very well.

Alſo note, that of a right onely, a man ſhall not be tenant by the curteſie: as if a woman ſole ſeiſed in fée of lands or tenements, bee diſſeiſed, and after take a huſband, and they haue iſſue, and ſhe die before any recntrie made, the huſband ſhall not be tenant by the curteſie.

Note

Note further, that of a reuersion, a man shall not be tenant by the curtesie: as if a woman sole seised of lands in fee, make a leale to S. for term of life, & after taketh a husbād, & they haue issue, and she die, liuing the lesse for terme of life, the husband shall not be tenant by the curtesie.

Of Tenant in Dower. Chap. 9.

TEnant in Dower, is shee that hath beene married to an husband that was during the matrimonie betweene them, seised of lands or tenements in fee-simple, or fee-taile, which is now dead, & she seised of the third part of her husbands said lands for terme of her life: For by the common law of the land, if the husband be at any time during the couerture seised lawfully, whether it be by purchase, or descent, either in fee, or in fee taile, & die, his wife shal be indowed by the course of the cōmon law of the third foote. And in some places by an ancient custome, shee shall be indowed of the moitie: yea and though her husbād were neuer seised actually during the couerture; yet if the landes bee cast vpon him by the law, so that the law calleth him tenant to euery mans actiō it sufficeth ỹ woman to demand her dower: for it were vnreasonable that the negligence & slacknes of entring of the husband, should hurt ỹ wiues title.

Dower at the common law.

Dower by custome.

Otherwise it is, as it is said before, of tenant by the curtesie: for if lands descend to a woman couert, and the husband for slouthfulnesse or negligence doth not enter in his wiues life, he shal not be tenant by the curtesie, for by al laws the wife oweth obedience and subiection to her husband

Tenāt by the curtesie.

husband, and therefore she cannot compel him to enter: but when lands descend to the wife, the husband onely hath power to enter at his pleasure.

And ye shall understand, that unlesse the wife be aboue the age of nine yeres at the time of her husbands death, she shall not be endowed by the common Law.

But it is to be knowen, that a woman may by diuers waies estoppe and preiudice her selfe of her dower: as if shee commit any crime, for which she is attainted of treason, murder, or felonie, she shall haue in this case no dower, notwithstanding she hath obtained her pardon. A woman shall haue no dower.

Also, if after the death of her husband she taketh a lease for terme of life, of the same landes whereof she is endowable, shee loseth her dower of the same. Moreouer, if shee depart from her husband, and liueth in adultery with another man, and is not reconciled againe to her husband, without coersion of the Ecclesiasticall power, she loseth her dower after her husbands death. She shall be also barred of her dower, if shee will withhold from the heire, the charters and euidence, concerning that land whereof she asketh dower. But none other saue the heire, can withhold her dower for this cause. No dower.

It ought to bee knowen also, of what things shee may demand dower, and of what things not. Of lands, messuages, aduowsons, rent charge, rent seruices, or seignories in grosse, or otherwise of villaines, of commons certain, of estouers certaine, of milles, and offices, or of the profit of them, she is dowable. But of commons

and eſtouers ſans number, alſo of annuities, of homages, of things of pleaſure, as of ſeruice, of paiment of roſes, and ſemblable, ſhe ſhall not bee endowed.

There be yet two other kinds of dower, the one is called dowment ex aſſenſu patris, that is to ſay, by the aſſent of the father, and the other is called dowment de la plus beale part, that is to ſay of the faireſt part.

Dowment ex aſſenſu patris.

Dowment ex aſſenſu patris, is when the father is ſeiſed of lands in fée ſimple, & his ſon which is heir apparant, endoweth his wife at the church doze, when he is eſpouſed, of parcel of his fathers lands, with the aſſent of his father in writing, teſtifying the ſame aſſent, if in this caſe her huſband die, ſhe may forthwith enter into the land ſo aſſigned vnto her without further procurement of proceſſe of law, although the father of her ſaid huſband be yet aliue, and in actuall poſſeſſion of the land. But if ſhe thus do, and take her to this endowment at the Church doze, ſhée cannot haue her dower alſo by the Common law of the third part of all her huſbands lands, or any part or parcell of them: how be it, if ſhée will refuſe this aſſigment made vnto her at the Church doze, & demaund dower at the common law, ſhe may ſo do very wel. A man may alſo indow his wife at the time of the eſpouſals, of his owne lands, the which he hath by his owne poſſeſſion, and that dower is called dower ad oſtium Eccleſiæ, that is to ſay, at the Church doze.

Dowment ad oſtium eccleſiæ.

Dowment de la plus beale part.

Dowment de la plus beale part, that is to ſay, dowment of the faireſt part ſhall be in this caſe, when a man is ſeiſed of lands which he holdeth of

of another man by knights seruice, and of other lands which be of socage tenure, and hath issue, which is within the age of 14. yeares, and die, and the Lord of whome the lands is holden by knights seruice, entreth in the land holden of him, and the mother of the childe entreth into socage tenure, as gardaine in socage, if in this case the woman will bring a writ of dower against the Lord which is gardain in chiualry, he may plead the speciall matter, and shew how shee is gardaine in socage, & hath so much land, and thereupon pray the Court that shee may bee suffered to endow her selfe of so much land, bein in her owne custodie, as amounteth to the third part of the whole lands.

And then the iudgement shal be, that the gardaine in chiualrie shall retain the land holden of him quite from the woman, during the nonage of the ward. After which iudgement and sentence giuen she may goe, & in the presence of her neighbours, endow her selfe of the best part of that which is in her custody, amounting to the third part of the whole, and then is she called tenant in dower de la plus beale.

Finally ye shall vnderstand, that by a Statute made in the 27. yeare of our most dread soueraigne Lord, King Henry the eight, it is enacted, that where diuers persons haue estates made to them and to their wiues, and to the heires of the husband, or to the husband and wife, and the heires of their two bodies begotten, or the heires of one of their bodies, or for terme of both or one of their liues, or any other persons and their heires, to the vse of An. 27. H. 8.

the husband and wife, or to the wife alone for her ioynture: in euery such case the woman shal not bee suffered to demaund any dowrie of the residue of her husbands lands, of whom shee hath ioynture, against any tenant of the land. But in case she hath no such ioynter, then may shee demaund her dowrie after the course of the common law. Prouided neuertheless, that if such women be lawfully expulsed from their ioynter, or any part therof, without fraud or couin, then shall they bee endowed of the residue of their husbands lands, for as much as the lands shall amount vnto, out of which they were so expulsed and put forth.

Prouided also, that if lands or tenements bee assured to any woman after mariage for terme of life, or likewise in ioynture (except it bee by act of Parliment) & the wife ouerliue her husband, in whose time the ioynture was made, in this case the wife maie refuse the lands so appointed vnto her in ioynture, & haue her dower at the comm̄o law, of such lands as her husband was seised of at any time during the couerture.

Also, if the husband committeth treason, murder, or felony, for which he is attainted, the wife shall not haue her dower.

And note, that if the husband enter into religion, and is professed, the heire shall enter into the land, but the wife getteth no dower till the husband dieth. M. 32. E. 2.

And likewise, if a man seised of land taketh a wife that is an alien born and dieth, she shal not be endowed, except shee bee made denizen by act of Parliament. T. 3. H. 6. And note, that where

the

the wife bringeth a writ of dower, & recouereth her right, ſhee ſhall recouer no dammages, but where her huſband died ſeiſed of the landes recouered.

A diuiſion of inheritance. Chap. 10.

HItherto haue I ſpoken of freeholds, now it remaineth to treat of inheritances, not that inheritaunces bee no free-holdes, for they be free-holds alſo: but the other eſtates of which I haue hitherto treated, bee only free-holdes and of no higher nature, whereas an eſtate of inheritance, although it bee a free-holde indeed, yet it is not ſo to be called by name, ſith it is a far more excellent & greater eſtate. But yee ſhall vnderſtand, that of inheritances ſome bee of more amplitude and excellent then other ſome be, as that inheritance which is pure, ſimple, & without limitation of what heires, which kinde of inheritance is called fee ſimple. But when I make a limitation of what heires, then it is called fee taple, and of which alſo be two ſorts, as hereafter more at large ſhall be declared. Now therefore the nature of fee ſimple is ſet forth with our accuſtomed compendiouſneſſe. Damages.

Of fee ſimple. Chap. 11.

FEe ſimple is (as I ſaide) the moſt ample and large inheritaunce that can bee in this realme deuiſed or inuented, it is that which a man hath to him and his heires, ſimply without any further limitation, for whether they be of his owne body begotten or not, ſo that they be the next of his kinne, and within the degrees it ſufficeth. Fee ſimple.

So then tenant in fée simple is hee that hath landes or tenements, whether it bee by purchase or by descent, to him & to his heires & assigns for euer. For if a man will purchase lands in fée simple, hée must néeds haue these words his heires in his purchase, for these be the only words that make the estate of inheritance. Therfore if lands be giuen to a man for euer, & no mention be made of his heires: hee hath an estate but for terme of his life, because these words his heirs, do lacke.

Yet neuertheless, if a man by his testament doth deuise landes to an other, in such place or case where the custome or law will serue so to do, though he maketh no mention of heirs, but saith that he bequeatheth to such a person such lands to haue and to holde to him and to his assignes for euermore, here an estate of inheritance doth passe, for in testaments the will and intent of the testator is to be pondered, and not the formall and prescript words of the law.

Also these terms in the law, frank mariage, & frank almoign, that is to say frée marriage & frée almes, do include in them words of inheritance.

And therefore if I giue landes to a man with my daughter in franke marriage without further addition or mention of heires, this is an estate of inheritance, as shall be hereafter declared more plentiously. So likewise it is of lands giuen to an house Ecclesiasticall in pure and franke almes. Moreouer, if land bee giuen to a man and to his blood, or vnto him and to his séede, hée hath in both cases an estate of inheritance, for in the last he hath a fée taile, & in the other a fée simple. For this word seede, & blood,

and

and such like, doe imply words of inheritance.

Also if landes bee giuen to a man and to his heires males, or females, hee hath by this gift a fee simple, because it is not expressed of what body the issue shall come.

But now it is to be seene who be said a mans heirs in the law: yee shal therefore know that my brother or sister by the halfe blood, that is to wit by the fathers side, & not by the mothers, or contrariwise by the mothers side, & not by the fathers, shall neuer bee mine heire, nor none that come of them. Neither my bastard can be mine heire, nor mine own naturall father nor mother, nor grandfather, nor grandmother can bee mine heire. For it is a principle & ground of the law, that inheritance may lineally descend, but ascend it may not. And therefore if I haue landes in fee simple, and die without issue of my body, my father cannot be mine heire, but my fathers brother or sister shall, and then if my vncle or aunt die seised without issue, my father shall haue the landes as heire to mine vncle, and not as heire to me, for that cannot be. But it may go from me to mine vncle or aunt well enough, for that is not called a lineal ascension, but a collateral descent.

The halfe blood.

A bastard shall be no heire.

A ground of the law.

Also you shal vnderstand, that a lineall descent is, when the descent is conueied in the same line of the whole blood: as grandfather, father, and sonne, and so downe. And collaterall descent is of another branche, from aboue of the whole blood, as the grandfathers brother, or fathers brother, and so descending.

Lineal and collaterall descent.

And ye shall note, that by the common law of this Realme, the eldest son shall haue the whole

inheritance, and after him if he haue no issue, the second sonne, & so forth. And if I haue no sons but daughters, then shall all the daughters together inherit, which be called coparceners: but if I haue no issue at all, neither sons, ne daughters, then shal my eldest brother inheritage succede me: but if I haue no brother, then my sisters if I haue any, if not, my vncle by my fathers side, if the lands be of mine owne purchase or if they descended vnto me frō my father. And to be short, if there be none in life of my fathers side, the purchased land shall goe to my mothers side, & if there can bee found no heire neither by my fathers side, nor yet by my mothers, then shal it escheat, as they call it, to the Lord of whō it was holden, for euery land must néeds be holden of some Lord, as shall be hereafter shewed. But if lands descend vnto mee by my mothers side, then if I faile of issue, the lands shal descend only to my heires of my mothers side, and neuer to mine heires of my fathers side: as on the contrary side, if I haue lands, or any tenements by descent from my father, or his bloud, they shall neuer descend to my heires by my mothers side:

Copartners.

Escheat.

Diuersitie.

And thus ye see a great difference in this behalfe, betweene purchased landes, and landes which descend from an auncestour.

If there be three sons, and the middle sonne purchase landes and die without issue, the eldest shall haue the landes, and not the yongest.

A ground of the law

Also it is a principle in our lawe, that none can bee mine heire of Lands that I holde in fee simple, vnlesse hee be mine heire by the whole blood, that is to say, both by father and mother, for

for if a man hath issue, two or three sons by sundry wiues, and the eldest purchaseth landes in fée and dyeth without issue, his haife brethren, I meane those that be not his brethren both by the fathers side, and mothers side, shall not haue the land, but it shall goe to his vncle. Likewise if a man hath by his first wife a son, & a daughter, and by his second wife another sonne, and the sonne by the first wife purchaseth landes in fee simple, & dieth without issue, the sister germain, that is to say, both by fathers side and mothers, shal haue the lands by descent as heir to her brother, & not the ponger brother, forasmuch as the ponger brother cannot in this case be heire of his elder brother, because he is no brother germain vnto him. Otherwise it is of lands or other hereditaments intailed, as shalbe hereafter specified.

Also if a man bee seised of lands in fée simple, and hath issue a son and a daughter by one wife, and after the death of his first wife, a sonne by another wife, and dieth, and the eldest son entreth into the lands, and after he dieth without lawfull issue of his bodie, the daughter shall haue the lands, and not the yongest sonne, and yet the youngest sonne is heire to his father, but hée is not so vnto his brother. But if in this case the eldest sonne had not entred after the death of his father, but had died before any entrie made by him, then shall not the sister germaine enter, but the younger brother is heire to his father, because the eldest brother was neuer in actuall possession, which is requisite to the person that claimeth to be heire collaterally.

But to the lineall heires, it sufficeth that the aunce-

auncestour should haue beene heire, if he had liued, I meane as thus: A man seised of landes and hath issue a sonne and a daughter by one wife, and afterward a sonne by an other, he dieth, and after his death the eldest sonne entreth not, but dyeth without issue before he can make actuall entry, heere in this case his sister shall not haue the landes as heire to her brother, because her brother was not in actuall possession, but the yonger brother shall haue them, as heire to his father: yet if the eldest sonne in that case had left behind him issue of his body, whether it had beene sonne or daughter, this issue notwithstanding that the Father of the issue was neuer possessed either actually or in the law, shal haue the landes, & shall conuey his descent from his father: the cause heereof is this, that the son or daughter is lineall heire, whereas the brother, sister, vncle, aunt, &c. be heires collaterall, and so ye shall obserue a diuersity.

Diuersity.

I call an actuall possession, when a man entreth indeede into lands, which be to him descended, but a possession in law is called when lands be descended to a person, & he hath not yet really & actually entred into them. For notwithstanding that he is not in actuall possession, yet he is possessed in the law, that is to say, in the eye and consideration of the law he is deemed to bee possessed, forasmuch as he is tenant for euery mans action that will sue for the said lands, or else assuredly there should ensue an intollerable inconuenience, as we shall more copiously open in another place. Ye shall furthermore vnderstand, that this word inheritance, is not onely to be accommodate

Hæreditas quid sit.

modate and applyed to that which commeth by
descent or succession from a mans ancestors or
predecessors, but also to euery purchase in fee
simple or fée tayle.

And note, that a man can haue no larger or
greater estate then fee simple.

Of Fee taile, Chap. 12.

YE shall vnderstand, that before a certaine statute called the statute of West. second ther was no estate tayle, but all was fée simple, either purely, that is to say without condition, or at the least way conditionally, as appeareth by the preamble of the said estatute, but now sithence the promulgation of the estatute, diuers formes of estates taile haue risen. westmin. 2 Chap. 1 Diuision.

Fée taile is, when it is prescribed and limited in the gift what sort of heires, and by whom engendred, shall inherite.

As for example, I giue lands to a man and to his heires, & goe no further, this is a fée simple: but if I make a limitation, and adde of his body begotten, now it is a fée taile, that is to say, a fee or inheritance limited, prescribed, determinate or alligned.

So that if I giue lands to a man and to his heires, he hath fee simple, but if I giue landes to him and to his heires of his body lawfully begotten, he hath but a fée taile, forasmuch as I appoint, limit, prescribe, & expresse what heires they shalbe, & for lacke of such heires the gift shall be expired and worne out, and the lands shalbe reuerted againe to the giuer or his heires.

But ye must obserue and note, that there be two kindes of fee tayle. There is a generall tayle,

tayle, and there is a speciall tayle.

Fée tayle generall is, where lands be giuen to a man and to his heires of his body begotten, without any mentioning & expressing by what woman they are begotten.

Generall taile.

And therfore if a man be tenant in the generall taile of lands, & taketh a wife and hath issue by her, and she dieth, and afterward hée taketh another wife, of whome he hath also other issue by her, either of these issues is inheritable to this land intailed. But if I expresse in the gift by what woman the heires shall be procreated & ingendred, then it is an especiall taile: as for example to make the thing plain, if lands be giuen to a man and to his heires of his body lawfully begotten by Margaret his wife, this is an especiall taile, for the issue of him begotten by another woman, shall neuer inherite by force & vertue of the taile. Likewise it is if lands be giuen to a woman & to the heires of her body lawfully begotten (& shew not by what man) this is a generall taile, but if I go forward & say by such a man her husband, then it is an especiall taile.

Especiall taile.

Also if I giue landes to a man & to his wife, and to the heires of their two bodies lawfully begotten: this is an especiall taile, as wel in the husband as in the wife.

Franke maariage.

Semblable it is, if a man giueth landes to another man with his daughter, or kinswoman in franke mariage, this word (franke mariage) implieth an estate taile especiall, and in this case as well the man as the woman hath an estate in the speciall tayle.

But if I giue landes to a man and to such a woman

woman, & to his heirs that he hath begot of her, heere the woman hath an estate but for terme of her life, and the husband an estate in the special taile. And likewise it is in the womans behalfe: as if I giue lands to a man & to his wife, and to her heires of her body by her said husband engendred, he hath an estate but for terme of life, & she an estate in the speciall taile. But in both cases, if I had said to the heires, & not to his or her heires, then should either of them haue had an estate in the special taile, because this word heirs is as well referred to the one, as to the other.

Yee shall also vnderstand, that if lands be giuen to a man, and to the heires males of his body, this is an estate taile, and in this case, the heire female shall neuer inherit. Descent by heire males.

Also, if a man hath issue and dieth, and landes bee giuen to him and to his heires of his body begotten, this is a good estate taile, although the father were dead at the time of the gift. Finally, it is to bee noted, that of landes which a man hath in fee simple, the possession of the brother, shall cause the sister germaine, that is to say, the sister both by the fathers side and mothers to inherit: and in this case, the brother by the halfe bloud shall not inherit, as heeretofore was said, but of lands which be intailed otherwise it is. Therefore, if a man be seised of lands in the generall taile, and hath issue by his first wife a sonne and a daughter; and also a sonne afterward by another wife, and dieth, and the eldest sonne entereth into the lands, and after dieth, the sister germaine to the eldest sonne shall not haue the landes, but the ponger brother of the

the halfe blood, because whosoeuer shall inherite land or any other hereditaments in tayle, must claime them as next and immediate heire not to him that dieth last seised of the lands, but to him to whom the lands were first giuen: vnto whome in the case before remembred, is the sonne heire, and not the daughter.

Diuersitie. Thus yee shall marke a great diuersitie betweene the forme of succession in the landes of fée simple, and the forme in fée tayle.

Tenant after possibilitie of issue extinct. Chap. 13.

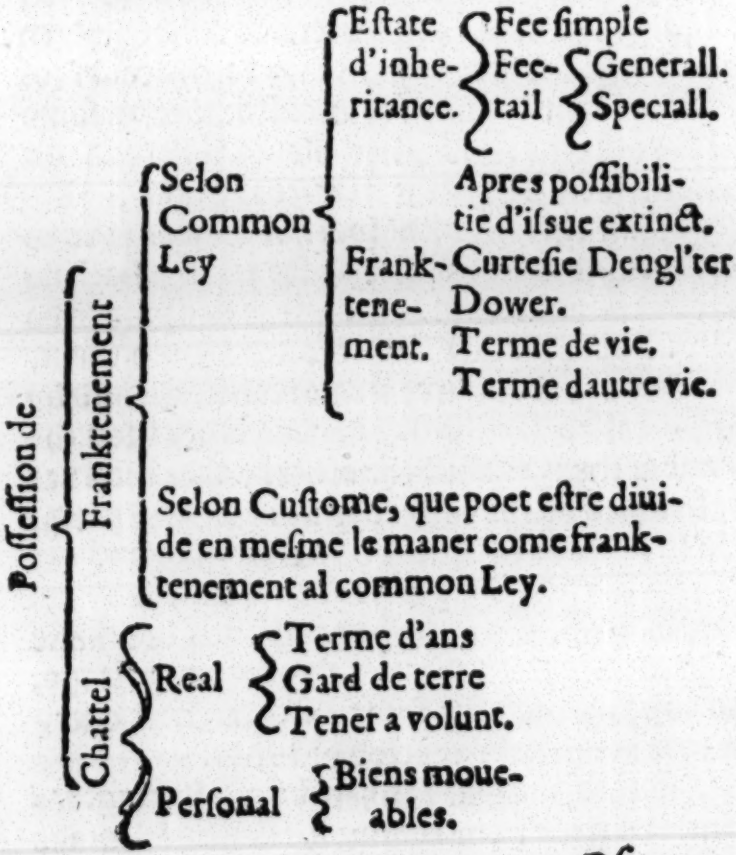
When lands, tenements, or other hereditaments, be giuen to a man and to his wife, and to the heires of their two bodies lawfullie begotten, if in this case either of them chaunce to die before they haue issue betweene them, hée or she that ouerliueth, is still tenant in taile, but without possibility of any issue that can be heire to these lands or hereditaments thus intailed, & for this cause he or shée thus ouerliuing, is called tenant in tail after possibility of issue extinct, for in such a tenant is all possibility of issue that may be inheritable to these lands by force of the gift in tail vtterly extinct or quenched, and by his or her death the estate taile shall expire, cease, & be abolished for euer, & shall reuert & turne againe to the giuer or donour from whence it came.

dispunishable of waste Yet for asmuch as the tenant after possibilitie of issue, had once an inheritance in him, hee shall not bée punished by an action of waste, though he maketh neuer so much waste in the lands and tenements, whereas yet in effect hee is but a tenant for terme of life. But if this tenant

nant doth alien, in fée, such lands, hée in the re- Forfaiture.
uersion may enter for the forfeiture.

And this for estates at this present time shal suffice. But to the intent that yée may the more easilie comprehend all the members of the diuision of possessions and estates which men maie haue in lands, tenements, and other hereditaments, it shall not be euill done to set forth as it were in a table before your eyes the deuision thereof, which is this.

A figure of the diuision of Possessions.



Of

Of Parceners or other Coheires. Chap. 14.

HItherunto I haue made a compendious & short declaration of estates of all sortes. But where I saide, that among sisters there is no prerogatiue or preheminence concerning the inheriting of their auncestours landes, but that they shal be altogether inheritours, and make as it were but one heire; it is expedient to make a further declaration and processe in this behalfe, and to shew how, and in what manner this partition shall be made.

Diuisiõ of Parceners at the Cõmon law, and Parceners by custome.

But yee shall vnderstand, that there bee besides Parceners at the Common Law, which bee only sisters, also Parceners by custom which is amongst brothers, contrary to the course of the Common Law; & this custome is in some places of Kent, & in other places where landes and tenements be of the tenure of Gauelkind.

Writ de Partitione facienda.

ye shall therefore know, that when a man is seised of land in fee simple, or fee taile, & hath no issue but daughters, & die, and the daughters do enter into the landes thus descended vnto them, now they be called parceners or coheires, and by a writ called De Partitione facienda, brought by one of them against the others, they shall bee constrained by the law to suffer an egall partition to be made of the landes betweene them.

Partition in diuers manners.

Now partitiõ may be made in sundry waies. One way is, when they themselues doe make partition betweẽ them of the whole heritage, and do agree vnto the same, and do enter euery one into her part so allotted vnto her.

Another way is, when by all their agreement & consent, one common friend doth make the

the partitiõ. In which case the eldest sister shal haue the first electiõ, & after her the secõd sister, & so forth. But if they agree that the eldest sister shal make the partition, & shee maketh it, then the eldest shall not chuse first, but shall suffer all her sisters to chuse before her, as it is thought.

There is also an other forme of partition, which is, equally to diuide the landes into so many parts as there be coheires or parceners, & to write euery part so diuided in a seuerel scroule of paper, & so put the said scroules in a bonnet, or to inclose them seuerally in balls of ware, & the eldest sister to chuse which ball shee will, or to put her hand into ỹ bonnet, & to take a scroule, and to hold her to her chaunce & allotment, and so consequently euery sister after other.

And yee shall note, that partition by agreé= ment, may aswell be made by nude and bare words without writing as by writing. Nota.

And if any of the parceners will not suffer any partition to be made, then may the other that would haue partition, purchase a writ called De Partitione facienda, against them that refuse partition, to compell the same to suffer partition to be made accordingly, and then by iudgement of the Court the Shirife by the oth & oath of twelue men, shall make partition betweene them, and shall assigne to each sister her portion, as he shall thinke good, without giuing any election or choise to the eldest. A writ de Partitione facienda.

And if two Manours or meases happen to descend to two sisters, and the manors be not of egal value, then may she, to whom the lesse manour or mease is allotted, haue assigned vnto

her a rent proportionably out of the other manour, for the which rent she & her heires may distraine of common right, though they haue no writting thereof.

Distresse of common right.

Finally, ye shal vnderstand, that if a man be seised of landes in fée simple, and hath issue two daughters, & giueth with one of his daughters to an other man that shall marry her, the third or fourth part of his land in frank mariage, & dyeth, if in this case ỳ daughter that is in this wise bestowed & aduanced, will haue her portion of her fathers heritage, shee must part her land giuen vnto her in frank mariage in Hoch pot new againe. I meane she must be cõtented to suffer her said lands to be commixed & inuingled with ỳ other lãds of which her father died seised in fee simple, so that an equal diuisiõ may be made of the whole, or else, she shall haue no part of those lands of which her father died seised. But if her father had made vnto her a common gift in taile, or feoffement in fee, she should not needs to put her lands in Hochpot, but may very wel keepe & retaine them still, & also haue as good part of the rest of the lads of which her father died seised, as her other sister or sisters haue. For a gift in franke mariage, is accompted the most free and most liberall gift that can be, and that gift which the law iudgeth to bee onely for the aduancemẽt and bestowing of the daughter, where as feoffements in fee simple, and also common gifts in tayle be accustomably for other causes, & for the aduantage rather of the giuer or feoffour, then of the taker.

Hochpot.

Franke marriage.

Also if parceners make partition of lands being

being within age, that partition is void.

And if parceners in fée simple make partition, and the part of the one is better then the other, being of full age of xxi yeares, then the partition is good and cannot bée defeated: but if it be of lands in fée taile, the one part being better then the other, ỹ partitiõ may be defeated by their heires.

Of Ioyntenants. Chap. 15

HItherunto verely have we spoken of Coheires, called Parceners at the common Law. Which as is heeretofore declared, do come to landes and other hereditaments ioyntly by the course, operation & acte of the Law. Now shall we speake somewhat of them which either ioyntly or severally come to lands tenements, or other hereditaments by their owne purchase, acte, procurement and working. And of these, they that come to them by ioynt title, way, or colour, be called ioyntenants, but they that come by severall tytles, waies, or colours, to landes or tenements bee named tenaunts in common. Tenant in common.

So then, if a man being seised of landes or tenements, or other hereditaments, shall thereof infeoffe two, three, foure, or more, to have & to hold to them in fée simple, fée tayle, or for terme of their liues, or for terme of an others life, these persons so enfeoffed and seised, bee called Ioyntenants. Also if two or mee doe expell and disseise an other man of any Landes or tenements to their owne behoofe and vse, these Disseisours and wrong doers are nowe become

become ioyntenants, because by their owne act they come ioyntly to this land. But if they doe disseise an other man to the vse onely of one of them, in this case they be not ioyntenants: but he to whose vse the disseisin is made, is tenant alone of the same, and the others haue nothing in the tenancy, but be called aydours or coadintors to the disseisin.

Disseisin. And yee shall vnderstand, that a disseisin is properly, where a man entereth into any lands or tenements there wher his entrie is not lawfull, and putteth out him which hath the freehold of the same.

Suruiuor taketh place. And ye shall furthermore know, that the nature of ioyntenancy is, that he which surviueth & ouerliues the other, shal haue to himself alone the whole & entire tenancie, according to that estate which he should haue had if the ioynture had beene continued: as for example, three iointenants be of lands in fee simple, & the one hath issue & dieth, in this case the two which doe ouerliue their fellow, shall haue the whole lands betweene them, & ỹ issue of him that is departed getteth nothing. And if the second iointenant hath also issue & die, the third which hath ouerliued them both, shall now haue and enioy the whole, to him and to his heires for euermore.

Diuersitie. But otherwise it is of coheires which in our law are called parceners. For if there bee three such coheires & parceners, & before any partitiō made, the one haue issue a sonne or a daughter & dyeth, her portion shall descend and fall to her child, and shal not runne amongst the other ioynt heires or coparceners. Howbeit if such

parce-

parcener or coheire had died without iſſue, then ſhould his portiõ haue diſcẽded to his coheirs. But how? not by force of ſurumour or ouerliuing, which in latine is called Ius accreſcendi, but by very deſcent: for where any of the coheirs die with out iſſue, who can be heir to him or her ſo dying, but the other coheires to him or her ſo dying, or the reſt of the coheirs if ther be many?

And like as this right of ſurumor or ouerliuing, holdeth place amoegſt ioyntenants of landes and tenements, ſo in like manner it holdeth place amõgſt them which haue ioint eſtate or poſſeſſion with others of chattels, whether they be reall or perſonall. As (for example) if a leaſe of landes or tenements be made to many for terme of certaine yeres, the ouerliuer or ouerliuers, ſhal haue the whole during the terme by force of the ſame leaſe. So of chattels perſonal, if an horſe, ore, grain, or other ſuch perſonal chattell be giuen to many, he which ouerliueth ſhall haue the ſame alone. In ſemblable wiſe it is of debts and duties. For if an obligation be made to many for one debt, & of ſome other couenants & contracts, the law is likewiſe ſo. Iointenants of real and perſonal goods.

Alſo ſome ioyntenaunts may be which may haue ioynt eſtate and be ioyntenants for terme of their liues, & yet haue ſeuerall inheritances. Iointenants of ſeuerall inheritances.

As where lands be giuen to two men & to the heires of their two bodies ingendred, in this caſes, thoſe two perſons haue ioynt eſtate for terme of their two liues. And yet they haue ſeuerall inheritances. For if the one haue iſſue and die, the other that ſurmueth ſhall haue all by force of the ſurumour for terme of his life.

And if he that suruiueth hath also issue and die, then the issue of the one shal haue the halfe of ẏ lands, & the issue of ẏ other shal haue the other halfe, & they shal not be iointenants, but tenants in common: and the cause & reason why such doubtes in such cases haue a ioynt estate for terme of their liues, is for that at the beginning the lãds were giuen to them 2. which words without more saying, make a ioint estate to them for terme of their liues: for if a man will let land to another by deede or without deede, not making mention what estate he hath, & of this maketh liuery of seisin, in this case the lesse shal haue an estate for terme of his life. And if he haue no liuery of seisin, he is tenant at will. And so forasmuch as ẏ lands were giuen vnto them, they haue a ioynt estate for terme of their liues. But the cause why they haue seuerall inheritance is this, for that they cannot by possibility haue an heire betweene them ingendred, as a mã & woman may haue: wherefore the law wil ẏ their estate & their inheritance shalbe such as reason will, after the forme & effect of the words of the gift, & that is to the heires that the one ingendreth of his body, by any of his wiues, & to the heires that the other engendreth of his body by any of his wiues. So it behoueth by necessitie of reason, that they haue seuerall inheritances. And in such case if the issue of one of them after the death of them both, doth die, so that he hath no issue aliue of his body ingendred, then the donor which gaue the land, or his heires, may enter in the halfe as in his reuersion, though the other

Tenãts in commõ.

hath

hath issue. And the cause is, that forasmuch as the inheritances be seuerall, therefore the reuersion in ỹ law is seuered, & the suruiuour of the issue of the other shall hold no place to haue the whole. And as it is said of males, in ỹ same maner it is where lãds be giuen to two females and to the heires of their two bodies begotten.

Suruiuour holdeth no place.

Also, if lands be giuen to two, & to the heires of one of them, this is a good iointenancie, and the one hath a freehold, and the other hath a fée simple, and if he which haue fee simple die, hée that hath the freehold shal haue the whole by the suruiuour for terme of his life.

And if these two iointenants ioyne in a gift in the taile to a stranger, reseruing a rent to him that hath an estate but for his life, this reseruation is voide to make a tenure. Likewise it is where tenements be giuen to two & the heires of the body of one of them engendred, the one hath a freehold and the other fée taile.

Note, if two iopntenants be seised of an estate of fée simple, and the one granteth a rent charge by his deed to an other, out of ỹ which to him belongeth, in this case during the life of the grauntour, the rent charge is good and effectuall, but after his decease the rent charge is void, as to charge the lands: for he that hath the land by the suruiuour, shall hold all the land discharged: the cause is, for ỹ he which suruiueth, claimeth to haue the lãd by the suruiuour, and not by descent of his fellowe. But otherwise it is of parceners, or coheirs, for if ther be .2. parceners in fee simple, & before any partitiõ be made the one chargeth that, that to him belongeth

Rẽt charge granted by a Iointenant.

Diuersitie

longeth by his dæde of a rent charge, and dieth without issue, here ỹ which to him belõgeth descendeth to the other parcener, & in this case the other parcener shall hold the land charged, because he commeth to the halfe by descent as heir.

Deuise by testament

Also if there bee two iointenants in fée simple within one borough where ỹ lands & tenements within the same borough be deuisable by testament, if the one of the said iointenants deuise that which to him belongeth by testament, and die, this deuise & legation is void. And the cause is, for that no deuise may take effect till after the death of the testator which bequeathed & deuised the same, & by his death al the land incontinent cometh by the law to his fellow that suruiueth, by the suruiuor, which neither claimeth nor hath any thing in the land by the deuise, but in his own right by the suruiuor after the course of the law, & for this cause such a deuise is void.

A ground of the law

But otherwise it is of Parceners seised of tenements deuisable in such case of deuise, for the cause aboue remembred. And it is commonly said, that euery iointenant is seised of the land that he holdeth iointly per my & per tout, that is, throughout and by all. And this is as much to say, that he is seised by euery parcell & by all: which saying is true, for in euery parcell and part, and throughout all the landes and tenements he is ioyntly seised with his fellow.

And therefore if the one iointenaunt make a feoffement to his companion, that is voyd, because he can make no liuery of seisin to him.

Diuersitie.

Also if 2. iointenants be seised of certaine landes in fée simple, and the one letteth that, that to him belon=

belongeth, to a ſtranger for terme of xl yeares & dieth within ỹ term, in this caſe after his death the leſſee may enter and occupy the halfe to him letten during the ſaid terme, though the leſſee neuer had poſſeſſion of it in the life of the leſſour by force of the leaſe. And the difference betweene the caſe of the grant of a rent charge, and this caſe is this, that in the grant of a rent charge by a iointenant, the lands or tenements abide alway as they were afore, without that, that any hath right to haue parcell of the tenements but themſelues, and the tenements abide in ſuch plite as they were before the charge. But where a leaſe is made by a iointenant to another for terme of yeares, incontinent by force of the leaſe, the leſſee hath right in the ſame land, that is to ſay, of all that, that to his leſſour belongeth, by force of the ſame leaſe, during his terme. And if ỹ leſſor in this caſe die, the other iointenant ſhall haue the rent or ferme during the ſaide terme, becauſe the reuerſion is come to him by ſurmiſe. Finally, if a ioint eſtate be made of land to the huſband & wife, and to a third perſon, in this caſe the huſband & the wife haue not in the law in their right but the halfe, & the third perſon ſhal haue as much as the huſband and the wife haue, that is to ſay, the other halfe: And the cauſe is, for that the huſband & wife be but as one perſon in the eye of the law. And it is here in like caſe as if an eſtate be made to two iointenants, where the one hath by force of the iointure the one halfe, & the other the other halfe. In ſemblable wiſe it is when an eſtate is made to the huſband and wife, & to other two men,

Diuerſitie, betweene a grant of a rent and leaſe.

men, in this case the husband & the wife haue not, but the third part, and the other two men the other two parts.

Also if two or three together disseise an other of lands & tenements to their own vses, then such disseisors be called ioyntenants.

More shall be saide of this matter touching Ioyntenants in the next Chapter.

Tenants in common. Chap. 16.

TEnants in common (as I said before) be they that haue landes or tenements in fee simple, fee taile, or for terme of life, which haue such landes and tenementes by seuerall titles, and not by one ioint title, and none of them knoweth that which is seuerall to him. And in this case they ought by the law before partition made betweene them, to occupy such lands and tenements in common, & vndiuided, and to take the profits in common. And because they come to such landes & tenements by seuerall titles, & not by one selfe ioynt title, and their occupation & possession in the same is among them in common, they be called tenants in common, or tenãts pro indiuiso. As for example, if a man enfeoffe two toyntenants in fee simple, & the one of them alieneth that, that to him belongeth to an other in fee, now the other toyntenant & he to whome the alienation was made be tenants in common, for that they be seised of such tenements by seuerall titles: for the one cõmeth to the one halfe by the feoffement of ỹ toyntenant, and the other hath the other halfe by force of the first feoffement made to him and to his first fellow: and so they be in by seuerall titles, and by

seue-

ſeuerall feoffements.

And it is to wit, that when it is ſaid in any booke that a man is ſeiſed in fee without more ſaying or addition, it ſhalbe vnderſtood fee ſimple: for it ſhall not be vnderſtood by ſuch a word in fee, that a man is ſeiſed of fee tayle, except there be put in it ſuch addition in tayle. Diffinition of fee only.

Alſo if three iointenants be, & the one of them alieneth that which vnto him belongeth to an other in fee, in this caſe the alience is tenant in common with the other two ioyntenants. But yet the other two ioyntenants bee ſeiſed of the two parts ioyntly: & of theſe two parts the ſurmount betweene them holdeth place. Ioyntenants.

Alſo if there be two ioyntenants in fee, & the one giueth that, that vnto him belongeth to an other in the taile, the donee & the other iointenant be tenants in cõmon. But if the lands be giuen to two men, and to the heirs of their two bodies engendred, the donees haue a ioynt eſtate for terme of their liues: & if each of them haue iſſue and die, their iſſues ſhal hold in common.

Alſo if landes be giuen to two men to haue & to holde the one halfe to the one & to his heires, and the other halfe to the other & to his heires, they be tenants in common.

Alſo if a man ſeiſed of certaine lands enfeoffeth an other in the halfe of the ſame land without any ſpeech of aſſignement or limitation of the ſame half in ſeueralty at the time of the feoffment, then the feoffee and the feoffour ſhall hold their parts of the land in common.

And as it is of tenants in common of lands or tenements in fee ſimple, & fee tayle, euen ſo it is

Iointe-nants.

is of tenaunt for terme of life. Therefore if two ioyntnants be in fée, & the one letteth to a man that, that vnto him belongeth for terme of life, and the other ioyntenant letteth that which to him belongeth, to an other for terme of life also, these two lessées be tenants in common for terme of their liues. Also if a man let landes to two men for terme of life, and one of them granteth all his estate to another, then that other tenant for terme of life, and he to whoune the graunt is made, shall be tenants in common during the time that both the lessées be aliue.

Note, if there be two ioyntenants in fée, and that one letteth that, that vnto him belongeth, to another for terme of life: the tenant for terme of life during his life, and the other tenant that did not let, be tenants in common. And vpon this case a question may rise, as thus. Let the case be that the lessor hath issue & dieth, liuing the other ioyntenant his fellow, and liuing the tenant for terme of life, the question is whether the reuersion of the halfe that the lessor hath shall descend to the issue of the lessour, or whether the other iointenant shall haue it by the suruiuour or no. And some haue said that the other iointenaunt shall haue the reuersion by the suruiuour, for as much as when the iointenants were iointly seised in fée simple, though one of them made an estate of that, that vnto him belongeth for terme of life, and though hee hath seuered the frankte-nement of that, that to him belongeth by the lease, yet he hath not seuered the fee simple.

Question.

But the fee simple abideth to them ioyntly as it was before. And so it seemeth vnto them, that the

the other ioyntenant which ſuruiueth ſhal haue the reuerſion by the ſuruiuour. But other haue thought the contrary, and this is their reaſon: When one of the iointenants letteth that which vnto him belongeth to another for terme of life, by ſuch leaſe the franktenement is ſeuered from the ioynture. So that the reuerſion that is dependant vpon ỹ ſame franktenement is ſeuered from ỹ iointure. Furthermore, if the leſſor had reſerued to him a yearly rent vpon ỹ leaſe, the leſſor only ſhould haue the rent, which is a prooke that the reuerſion is onely in him, & that the other hath nothing therein.

Also if the tenant for term of life were impleaded, and make default after default, the leſſour ſhall bee onely hereupon receiued to defend his right, & not his fellow. which proueth the reuerſion of the halfe to be only in the leſſour, and ſo conſequently, if the leſſour die liuing the leſſee for term of life, the reuerſion ſhal deſcend to the heires of the leſſor, and ſhal not come to the other iointenant by ỹ ſuruiuor after theſe mẽs opinions, yet it is doubtfull. But in this caſe if the ioyntenant that hath the franktenement, haue iſſue and dye, liuing the leſſor and the leſſee, then it ſeemeth that the iſſue ſhall haue the halfe in his demeſne as of fee by deſcent, foraſmuch as ỹ franktenement may not by nature of the ioynture be annexed to a reuerſion: and it is certaine that he that made the leaſe was ſeiſed of the half in his demeſne as of fee, and that none ſhall haue any ioynture in his franktenement. So that this ſhall deſcend to his iſſue.

Reſceit.

Quære.

If three ioyntenants be, and the one releaſeth by

by his deed to one of his fellowes all the right he hath in the land, then hath hee to whom the release is made, the third part of the lands by force of the release, and he and his fellow shall holde the other two parts iointly. And as to the third part that hee hath by force of the release, he holdeth it with himself and his fellow in common.

Release. And it is to wit, that sometime a deede of release shal take effect to put the estate of him that made the release, in him to whom the release is made: as in the case aforesaid.

Also if a ioynt estate be made to the husband and wife and to a third person, & the third person releaseth his right that hee hath to the husband: then hath the husband the halfe which ỹ third person had, and the wife of this hath nothing. Semblably, if the third person had released to the wife not naming the husband in the release, then should the wife haue the halfe that the third person had, and the husband nothing of this but in ỹ right of his wife, because such release shall inure to put the estate in him to whom it was made, of all that, that belōgeth to him that made the release. Again in some cases release shal enure and serue to put all the right that a men hath that made ỹ release in him to whom it is made. As a men being seised of certaine lands is disseised by two disseisors, if the person disseised by his deed release all his right to one of the disseisors, then he to whom the release is made shall haue and holde all to him alone, and put out his fellow out of the occupation of it. And the cause is, for that the two disseisors were seised by wrong by them done against

Diuersitie

gainſt the lawe, & when one of them gettes the releaſe of him that had right to enter, his right reſteth in him to whome the releaſe is made, & in ſuch plight as if he that had ỹ right had entred & infeoffed him of the ſame. And the cauſe is, for that he that had before an eſtate by wrõg, hath now by the releaſe a rightfull eſtate.

Releaſe by way of extinguiſhment.

And in ſome caſe a releaſe ſhall inure & take effect by way of of extinguiſtment. & ſuch a releaſe ſhall help the iointenant to whome the releaſe was not made, aſwel as him to whõ it is made: as if a man be diſſeiſed, and the diſſeiſor maketh a feoffement to two men in fee, if the perſon diſſeiſed releaſe to one of the feoffees in fee by his deed, then ſuch releaſe ſhall inure to both the feoffees, becauſe the feffees haue their eſtate by the Law, that is to ſay, by the feoffemẽt, and not by wrong done to any other.

A releaſe ſhall inure to him in the remainder.

And in like maner if the diſſeiſeur make a leaſe to a man for terme of life, the remainder ouer to another in fee, if the diſſeiſee will releaſe to the tenant for terme of life all his right, this releaſe ſerueth as well to him in the remainder as the tenant for terme of life. And the cauſe is, for that the tenant for terme of life commeth to his eſtate by the courſe of the lawe, and for this cauſe the releaſe ſhall inure and take effect by way of extinguiſtment of the right of him that hath releaſed. And by this releaſe the tenant for terme of life hath no greater eſtate then hee had before the releaſe made vnto him, and yet the right of him that releaſed is all vtterly extinct & gone. wherefore foraſmuch as ſuch a releaſe cannot inlarge the eſtate of the tenant for

terme

terme of life, it is reason, that it shall serue him in the remainder.

Also if there be two parceners, and the one alieneth his part to an other, the other parcener and the alienee be tenants in common.

Tenants in cõmon by title of prescription.

Furthermore, tenants in common may be by title of prescription, if that one & his auncestors or they whose estate he hath in the halfe, haue holden in cõmon the same halfe with the other tenant that hath the other half, & with his auncestours, or them whose estate he hath as vndiuided, time out of mind. And ye shal marke, that in some case tenants in common ought to haue of their possession seuerall actions, & in some case they shall ioyne in one action: for if there be two tenãts in cõmon & they be disseised, they ought to haue against the disseisor two assises, and not one assise. For euery of them ought to haue an Assise of his halfe, because they were seised by seuerall titles. But otherwise it is of Iointenants: for if there be xx. iointenants, & they be disseised, they shall haue in all their names but one assise, because they haue but one ioint title.

Actions seuerall.

Assise.

Assise.

Also if there be three iointenants, of whome the one releaseth to one of his fellowes all the right he hath, and afterward the other two be disseised of the whole, in this case they shal haue in both their names one assise of the two parts: And as to the third part, he to whom the releas was made, ought to haue therof an Assise in his owne name, because as to the third part he is tenant in common.

Diuersity

Also as to sue actions that touch the realtie, there is a diuersity betweẽ parceners that are

in by diuers discents, and tenants in common. For if a man seised of certain landes in fee, hath issue two daughters, and die, & they enter into the landes as coheires, and each of them haue issue a sonne, and die without partition made betweene them, so that the one halfe descendeth to the sonne of thone parcener, & the other halfe to the son of the other, and they enter and occupy in cõmon, & be disseised, in this case they shal haue in their two names one assise, & not two assises. And the cause is, though they come in by diuers descents, yet they be coheires & parceners. Also if two tenants in common of certain lands in fee giue the same to another man in the taile, or let it to another for terme of life, yeelding an annuitie, or certaine rent, or a pound of Pepper, or an hauke, or an horse, & they bee seised of these seruices, & afterward all the rent is behind, and they distraine for it, and the tenant maketh rescous, in this case as to the rent and the pound of Pepper, they shal haue two assises, and as to the hauke, & the horse but one Assise. And the cause why they haue two Assises as to the rent and pound of Pepper is, for that they were tenants in common by seuerall titles, & when they made a gift in the taile, or lease for terme of life, sauing and reseruing to them the reuersion, & yeelding to them certaine rent, this reseruation is incident to their reuersion. And because their reuersion is in common and by seuerall titles, euen as their possession was before the rent and other things which maie bee seuered, and which were to them reserued vpon the gift, or vpon the lease which be incident by the same to the reuer-

Rescous.

Plaint in assise.

sion, therefore such things so seuered be of the nature of the reuersion. wherefore it behoo-ueth that the rent and the pound of Pepper which maie be seuered to bee then in common by seuerall titles. And of this they shall haue two Assises, and euery of them in his Assise shall make his plaint of the halfe of the rent, and of the halfe of the pound of Pepper. But of the hauke, and the horse, which cannot be seuered, they shall haue but one Assise, for it were an ab-surdity & a thing inconuenient to make a plaint in Assise of the halfe of an Hauke, or of the halfe of an horse. In like manner it is of the other rents & seruices that tenants in common haue in ground by diuers titles.

Personall action.

And yee shall vnderstand, that concerning actions personals, tenants in common ought to haue them iointly in all their names. that is to saie, of trespasse, or offences that touch their tenements in common, as of breaking of their houses, breaking of their closes, and pastures, wasting and defouling of their grasse, cutting of their woodes, and of fishing in their ponds, and such other, and they shall recouer iointly da-
Damages. mages, because the action is in the personaltie and not in the realtie.

Tenants in common shall haue one action of debt.

Also if tenants in common make a lease of their tenements to another for terme of yeeres, yeelding vnto them yeerely a certaine rent, if the rent bee behind, they shall haue one action of debt against the lessee, and not diuers actions, because the action is in the personaltie. But in an auowrie for the said rent, they ought to bee seuered, because it is in the realty, as be assises.

Of

Of Chattels. Chapter 17.

IT is to bee knowne, that as there be tenants in common of lands or tenements: so there bee tenants in common of possessions & property of chattels, aswell reall as personall. Of reall, as if a lease bee made of certaine landes to two men for terme of twenty yeeres, and when they be thereof possessed, the one granteth that, that vnto him belongeth during the terme to an other, hee to whome the graunt is made, and the other shall hold and occupie in common.

Also if two ioyntenants haue the ward of the body & of the lands of an heire within age, and the one of them graunteth to another that, that vnto him belongeth of the same ward, then he to whome the graunt is made, and the other that granteth not, shall haue and hold it in common. Iointenãts of a ward.

Of Chattels personalls: as if two haue a ioynt estate, either by gift, or by buying of an Horse, or of an Ore, or such like, and the one of them graunteth that, that to him belongeth, heere shall the grantee, and hee that graunted not, haue and possesse such chattell personall in common. And in such case where diuers persons haue chattels reals or personalls in common, and by diuers titles, if one of them die, the other that suruiueth shall not haue his fellowes parte by the suruiuour, but the executors of him that dieth shall holde and occupie it with him that suruiueth, in like forme as their testatour did, or ought in his life, forasmuch as their titles and rightes were seuerall. Also in the case aforesaide, if two haue an estate in common for terme of yeares, and the one doeth

occupie all and put the other out of his poſſeſſi-
on and occupation, then ſhall hee that is put out
A writ de Eiectione firmæ. haue againſt the other a writ de Eiectione fir-
mæ for the halfe. In ſemblable manner where
two hold the ward of landes or tenements du-
ring the nonage of a child, if one ſhall put out the
other of his poſſeſſion, hee that is out ſhall haue
De Eiectione cuſtodiæ. a writ de Eiectione cuſtodiæ of the halfe, becauſe
theſe things be chattels reals & may be appor-
tioned & ſeuered. But no action of treſpaſſe lieth
for one againſt the other (as for example. Qua-
re clauſum fregit & herbam ſuam conculca-
uit & conſumſit, nor ſuch like actions) foraſ-
much as each of them may enter and occupie in
common. But if two bee poſſeſſed of chattels
perſonals in common by diuers titles, as of an
Horſe, an Oxe or a Cow, if the one take it all to
himſelfe out of the poſſeſſion of the other, the o-
ther hath none other remedie, but to take it a-
gaine from him that hath done him the wrong,
when he may ſée his time.

In like manner of chattels reals, which may
not bee ſeuered, as in the caſe aforeſaid, where
two be poſſeſſors of the wardſhip of the body of a
childe within age, if one of them ſhall take the
child out of the poſſeſſion of the other, the other
hath no remedy by any action at the law, but to
take the child out of the others poſſeſſion, when
Forme of pleading. he ſeeth his time

Finally, yee ſhall vnderſtand, that when a
man in pleading and declaring his cauſe, will
ſhewe a deede of Feoffement made vnto him, or
a gift in fee taile, or a leaſe for terme of life, of
any lands or tenements, he ſhall vſe his termes
in this wiſe, and ſay, by force of ſuch feoffement,
gift,

gift, or leafe he was ſeiſed, &c.

But where a man will declare or pleade a leafe or graunt made vnto him of a chatteli reall or perſonal, then he ſhall ſay by force of which he was poſſeſſed.

Of Partition to be made by Ioyntenants and tenants in common, enacted by 2. ſtatutes made, the one in An 31. H. 8. & the other in 32. H. 8. Chap. 18.

ALL iointenants and tenants in common of any eſtate of inheritance in their owne rightes or in the right of their wiues, of anie landes or hereditaments within this realme of England, wales, or the Marches of the ſame, ſhall and may be compelled to make partition betweene them, of the ſame which they ſo hold as iointenants or tenants in common, by a writ de partitione facienda, to be deuiſed in the Chancerie in like manner as coparceners are compelled to do, and the ſame writ to bee purſued at the common law. And after ſuch partition made, euery of the ſaid iointenants and tenants in common, ſhall and may haue aide of the other, or their heires, to the intent to dereigne the warranty parramount, & to recouer for the rate as it is vſed betweene coparceners, after partition made by the order of the common law.

Writ de partitione facienda.

Aide prayed.

Item, in the 32. yeare of King Henrie the eight, Chapter 32. It is further enacted, that al iointenants & tenants in common, which hold ioyntlie or in common for terme of life, yeare or yeres: or iointenants or tenants in cõmon, wher one or ſome of them haue an eſtate for terme of

life or yeares, with other that haue an estate of inheritance or freehold in any landes or other hereditaments, shall be compellable by writ of Partition to bee pursued out of the Chaunterie vpon their cases, to make seuerance & partition of all such landes & hereditaments as they hold ioyntly or in common for terme of life or liues, yeere or yeres, or where one or some of them hold ioyntly or in common for terme of life or yeres with other that haue an estate of inheritance or Freehold. Prouided that no such partition nor seuerance bee hurtfull to any person, other then such as be parties vnto the said partition, their executors or assignes.

Of Conditions. Chapter 19.

FOrasmuch as euery estate is either pure or conditionall, it were not amisse to make some declaration of the nature and efficacie of conditions. Wherefore yee shall vnderstand, that of conditions, some be actuall conditions, and be called expresse conditions, or conditions indeed, and other some be conditions in lawe, which be called in Latine, conditiones tacitæ siue conditiones implicitæ, because they bee secretly implyed by the law and not expressed.

Diuision. Conditions in deede, bee such as bee knit and annexed by expresse wordes of the Feoffement, lease or graunt, either in writing or without: as for example, if I infeoffe a man of certaine lands, reseruing to me, and to my heirs, so much rent yeerly to be paid at such a feast, and for default of payment, that it shall be lawfull for mee to reenter, this is a Feoffement vpon condition of paiment. And here the reentry of the Feoffor

for

for the not payment of the rent shall dissolue and vtterly defeat the feoffement. Semblable it is of gifts in taile, leases, &c. But if the condition be, that for default of payment of the rent, it shal be lawfull for the feoffour to enter againe into the lands, and to hold them till he be contented and satisfied for the rent: this condition not performed doth not dissolue nor vndoe the feoffement, but onely giueth to the feoffour an authoritie to retaine the lands (as it were by way of distresse) till he hath leuied the arerages of the rent. Distresse.

And ye shall well marke and obserue, that conditions bee sometime made to be performed on the feoffées behalfe, and sometime on the feoffors behalfe. On the feoffees behalfe, as when I infeoffe you of lands or tenements, vpon condition that you shall doe such an act, as to pay vnto me or mine heires such an annuall rent. On the feoffours behalfe, as when I make a feoffement vnto you vpon condition, that if I pay or cause to bee paied vnto you before such a day, such a summe of money, then it shall be lawfull for me to enter againe and retaine my lands in my former estate: In this case he that is the feoffée, is called tenant in morgage, which is as much to say, as dead-gage, and it séemeth that the cause why it is so called, is forasmuch as it is doubtfull whether the feoffor will pay at the day limitted and prescribed such a summe of money for the redemption of his lands, or not: for if hée doe not, his title or interest in the landes thus gaged and oppignorate, is vtterlie extinct and gone, without all hope of renewing. Tenants in morgage.

Yee shall also note, that if the Morgager

dyeth before the day of paiment, his heire maie redeeme the land very well, euen as well as his auncestour that morgaged the land might haue done, although there be no mention made of heirs in the writing.

Also if when the monie is lawfully by the morgager or his heire tendered and profered, and the lessour refuseth to receiue the same, the feoffour or his heire may enter, and then hath the feoffée no remedie for his money at the common law. Ye shall vnderstand also, that some conditions be vtterlie void in the law, and of none efficacie, vertue, or strength. As if a feoffement be made of lands in fee simple vpon condition that the feoffee shall not alien or put away the same to none other, this condition I say is voide, because the feoffée is restrained of his whole power that the law giueth in such case vnto him, and which power & liberty is in a manner included in euery feoffement: yet I may abridge him of part of his power, as to condition with him, that he shall not alien the lands to such a person, or such. But of gifts in taile otherwise it is: for if I giue lands to a man, and to the heires of his body lawfully begotten, vpon condition that hee nor his heires shall alien the landes to none other person, this condition is good and effectuall in the Law, and if he or his heires contrarie to the condition do alien them, then the giuer or his heires may very well enter and retaine the landes for euer, because this condition shal stand with the forenamed statute of Westminster the second, which prohibiteth such alienations to be made.

Conditions voide.

Gift in tail vpon condition.

Hither-

Hitherunto haue I ſpoken of Conditions in deed, now will I ſhew what be Conditions in law that be annexed to ane eſtates.

Know ye therefore, that if the office of a Parker, Steward, Conſtable, Bedell, or Bailife, or ſuch like office, be granted to a man for terme of his life, though there be no condition at all mentioned in the grant, yet the law ſpeaketh of a condition in this caſe, which is, that if the partie to whom ſuch office is giuen, ſhall not execute all pointes appertaining vnto his office accordingly, by himſelfe, or his lawfull deputie, it ſhall bee lawfull for the grauntor, to enter and diſcharge him of his office, and this condition is called a condition in law. Eſtates vpon conditions in law.

There be alſo three other manner of Eſtates vppon condition, that is to ſay, conditions againſt the law, conditions repugnant, and conditions impoſſible. Firſt, eſtates vpon conditions againſt the law be, as if a man make a feoffement, gift, grant, or leaſe vppon condition, that if the feoffeurs, donours, grauntours, or leſſours, kill I. S. which is not the kings enemy, or burne his houſe, that then it ſhall be lawfull to the feoffeurs, donours, &c. to reenter, this condition is void, and the eſtate good. Conditiõs againſt the law.

And like law is, if ſuch conditiõs be to be performed of the part of the feoffee, grauntee, &c.

But if it be that a leaſe for terme of yeares be made of land vppon condition, that if the leſſee kill I. S. that then he ſhall haue fée ſimple, although that he in this caſe performe the condition, his eſtate is nothing thereby inlarged, becauſe the condition is againſt the law.

Alſo

Obligatiõ. And yée shall vnderstand, that where an Obligation is indorsed with a condition which is against the law, both the obligation and also the condition be clearely void in the law.

Conditions repugnant. Estates vpon conditions repugnant be, as if a feoffement, or a gift in taile, be made vpon condition that the feoffée or donée, shall take no profit, or shall doe no waste, and such other like, such conditions bee voide, and the state good and effectuall in the law notwithstanding.

Also if a lease be made for terme of life, vpon condition that he shall not doe fealtie, that is as a void condition.

Likewise it is, if a man that hath nothing in the manour of Sale, granteth a rent charge going out of the same, vppon condition, that the person shall not be charged, this graunt is good, and the condition is void.

Conditions impossible. Estates vpon conditions impossible be, as if a feoffement be made vpon condition, that if the feoffée goeth not through the Sea on foote to Calcis in one day, then it shall be lawfull to the feoffour to reënter. this is a frustrate and void condition, and yet the estate is good.

Like law is of a lease made for terme of yéers, &c. or an obligation with a condition impossible vt supra, the obligation or lease is good, and the condition void to all purposes.

An act how strangers shal take aduantage of Conditions made, An. 32. H. 8. Chap. 20.

IT is enacted, that as well persons which haue, or shall haue any gift or graunt of the king by his Letters patents, of any landes, parso-

parſonages, titles, or other hereditaments, or any reuerſion of the ſame which did belong to any monaſtery or other eccleſiaſticall houſe diſſolued or otherwiſe come into the kings hands ſince the fourth day of Februarie in the xxvii. yere of our Soueraigne Lord king Henry the eight, or which at any time heretofore did belong to any other perſon, and after come into the kings hands, as alſo other perſons being grauntees or aſſignées to the king or to any other perſon, their heires, executors, ſucceſſours, and aſſignes, ſhall haue like aduantage againſt the farmours, and their executors, adminiſtrators, and aſſignes, by entrie for non-payment of the rent, or for doing waſte or other forfeiture, and alſo ſhall haue the ſame aduantage by action onely, of not performing of other conditions, couenants or agréements contayned in the indentures of their leaſes or graunts againſt the ſaid farmors, & grauntees, their executors, adminiſtrators, and aſſignes, as the ſaid leſſors or grauntors themſelues might haue had at anie time. And againe mutually and on the other ſide, the ſaid farmours and grantees for terme of yeeres, life, or liues, their executors, adminiſtrators and aſſignes, ſhall haue like aduantage againſt them for any condition, couenant and agreément contained in the ſaide Indenture, as they might haue had againſt their ſaide leſſors and grauntors, their heires, ſucceſſors, all benefits and aduantages of recoueries in value, by reaſon of any warrantie of deed, or in law by voucher or otherwiſe onely except.

Prouided that this Act ſhall not extend to charge

charge any person for breach of any couenant or condition compriſed in any ſuch writing, but for ſuch as ſhalbe broken and not performed after the firſt day of September in the 32. yeare of this king and not before.

Liuery of ſeiſin, and Atturnement.

Chapter 21.

IN all feoffements, gifts in taile, leaſes for terme of anothers life, of lands or tenements, there can be no alteration or tranſmutation of poſſeſſion by the auncient lawes of this realme, vnleſſe there bee a certaine ceremonie adhibited and ſolemnized in the preſence & ſight of neighbours or others, which ceremony is called liuery of ſeiſin.

The maner of liuery of ſeiſin.

And yee ſhall vnderſtand, that this ceremonie of liuery of ſeiſin is done, when the feoffour, donour, leſſour, or their deputie come with the neighbours ſolemnly to the lands or tenements, and they put the feoffée, donée or leaſſée, in poſſeſſion of the ſaid landes or tenements, by deliuering vnto him a clod of earth, or the ring of the doore, or ſome other thing in the name of ſeiſin, and for this ſelfe cauſe this ceremonie of law is called liuery of ſeiſin, that is to ſay, a tradition or giuing of ſeiſin.

Diuerſity betweene poſſeſſion and ſeiſin.

But this ceremony is not required in leaſes, for terme of yéeres, or in leaſes at wil, foraſmuch as the leſſour in ſuch leaſe remaineth ſtill ſeiſed, and the leſſée onely hath poſſeſſion without anie liuery of ſeiſin: and therefore the termes of the law be, that ſuch a man is poſſeſſed, whereas in feoffements, gifts in taile, and leaſes for life, hée is called ſeiſed.

where-

Wherefore if a Feoffement or Leafe for life be made of lands or tenements, & before that the liuerie of feifin be made, the feoffour dieth, the heire of the feoffour fhall haue the landes, Per fummum ius, that is to fay, by the rigour of the law, notwithftanding that the feoffee haue paid to the feoffor the price of the land, and although the feoffee be in poffeffion. But otherwife it is of a leafe for terme of yeares.

Atturnement.

A like ceremonie is vfed when rent charge, rent feruice, rent in groffe, a villaine in groffe, common in groffe, common for beafts, certaine eftouers, and fuch other things as paffe by way of graunt, be graunted, for it is no full and perfect grant til it be confignat and fealed as it were with the ceremonie of atturnement. This Atturnement is nothing elfe, but when the tenant of the land of which a rent granted is granted, or out of which a rent is graunted, doth make fome euident fignification and token that hee accepteth the perfon to whom the graunt is made, to be in the fame refpect vnto him that the grauntor was. As for an example, if the tenant of the land, after hee haue heard of the graunt, commeth to the grauntee, that is to weet, to the perfon to whom the graunt was made, and fay in this wife or in like effect:

How Atturnement fhall be made.

I agree vnto the graunt made vnto you by fuch a man, or I am well apaid and contented of the graunt that fuch a man hath made vnto you. But the moft vfuall frequent forme of atturnement is, to fay; Syr, I atturne vnto you by force of the faid grant, or I become your tenant, or to deliuer vnto the grauntee a peny, or

a halfpeny by way of atturnement.

If a man maketh first one graunt to one person, and after another to another person, that graunt shall stand to which the tenant will atturne, although it be to the latter graunt.

And yee shall note, that if a man be seised of a manour, which is parcell in demeane, and parcell in seruice, and doth alien the same Manour to another, vnlesse the tenaunt of the Manour doe atturne, the seruice shall not passe, oneli tenants at wil excepted, for it needeth not to cause them to atturne.

Diuersitie. Note furthermore, there is a great difference betweene giuing a peny in name of seisin, and giuing by way of atturnment, for when it is giuen by the tenant to the grantee in the name of seisin, it doth not only imply an atturnement, but also it giueth him such a seisin, that if the rent afterward were behind & not paied, he may now vpon the seisin of the peny after a lawfull distresse taken, & after rescous made, bring an assise of nouel disseisin, whereas if it were giuen only by way of atturnment he could not bring the assise, but his writ of rescous oneli, if rescous were made.

Assise.

Writ of rescous.

Also ye shall vnderstand, that where landes be deuisable by Testament by the custome of any auncient Borough or Citie, if the reuersion of any lands be by Testament bequeathed to a man in fee, and the Testator, which we call the Deuisor, dieth, the deuisee, that is to weet, he to whom the deuise was made, hath forthwith the reuersion in him without further ceremonie of Atturnement. Likewise it is if a man by testament doth bequeath a rent charge that he is seised

Atturnement.

fedok, oz a rent ſeruice, there nédeth none atturnement at all.

If two ioyntenants be of land, and the Lord graunteth the ſeruices to another, if one of the ioyntenants atturneth, it is enough.

Finally, if a leaſe bee made foz terme of life, the remainder to another in taile, the remainder ouer to the right heire of the tenant foz terme of life, in this caſe if the tenant foz terme of life, will graunt his remainder in fee to another by his déede, this remainder paſſeth foozthwith without any Atturnement, foz if any atturnement were requiſite, it ſhould be made of the tenant foz terme of life, which in this caſe is the grauntour himſelfe. And in vaine it is that the grauntour ſhould be inforced to atturne, ſith an atturnement is adhibited and had to none other purpoſe then to haue the conſent and agréement of the particular tenant, to the intent that it may appeare, that he hath notice and knowledge of this graunt: but heere where the particular tenant himſelfe is the grantour, an atturnement were ſuperfluous, and moze then needed. Not requiſite.

Note furthermoze, that where there is Lord and tenaunt, and the tenant leaſeth his tenements to a woman foz life, the remainder ouer in fée, the woman taketh a huſband, & after the Lord granteth the ſeruices &c. to the huſband in this caſe during the couerture the ſeruices bée put in ſuſpence. But if the wife die, liuing the huſband, the huſband and his heires ſhall haue the rent of them in the remainder, &c. And in this caſe there nédeth no atturnement by word, becauſe the huſband that ought to atturn, accepteth Suſpence.

teth the graunt of the seruices, the which acceptance is an attornement in the lawe.

Of Seruice. Chap. 22.

HItherunto haue I briefly touched & ouerrunne the sundry kindes and formes of Estates. Now forasmuch as there is no tenure, but hath vnto it some seruice knit and annexed, it were very necessary to declare how many kinds of seruices there be, & what seruice is due to euery tenure. For the knowledge hereof, yee shall vnderstand that the principal and most cõmon kind of seruice that the tenant oweth to his Lord, is called knights seruice.

Kinghts seruice. Chap. 23.

KNights seruice includeth homage, fealty, and for the most part escuage. & whosoeuer holdeth his lands by Knights seruice, is bound by the law of this realme to doe vnto his Lord homage and fealty, and to pay for the most part escuage, when it shall be assessed by authoritie of Parliament, as heretofore more plainly shall be declared.

Homage.

Homage is the most humble and reuerent seruice that a man of free estate & condition can do, for when the tenãt shal do homage to his Lord, the Lord shall sit, & the tenant then shall knéele downe before him vpon both knées, holding his hands betwéen his Lords hands, & say in this wise: I become your man from this daie forward, of life, & of member, & earthlie honor, and to you shall be faithfull & true, and faith to you shall beare for the landes that I claime to holde of you: sauing the faith that I beare vnto our soueraigne Lord the king, and then the Lord so sitting,

How the tenant shal doe homage.

ſitting ſhall kiſſe him. But if an Eccleſiaſticall perſon, which by his order and profeſſion hath addicted himſelfe to the ſeruice of God in eſpeciall, ſhall do homage to his Lord, hee ſhall ſay, I do to you homage, and ſhall be to you faithfull and true, and faith to you ſhall beare for the tenements that I hold of you, ſauing the faith which I owe to our ſouereigne Lord the King. What a religious perſon ſhall ſay when hee doth homage.

Alſo when a woman not maried, doth homage to her Lord, ſhee ſhall not ſay, I become your woman, for it is not conuenient that a woman ſhould bee the woman of any other then of her husband that ſhe ſhall marry, but ſhall ſay euen as the Eccleſiaſticall perſon ſaith, I doe vnto you homage, &c. And if perchaunce a man holdeth ſundry landes and tenements of ſundry Lords, & euery of them by knights ſeruice, then in the end of his homage making, hee ſhall ſay, ſauing the faith that I owe to our ſouereigne Lord the King, and to mine other Lords. And none is bound to doe homage to the Lord, vnleſs it be ſuch tenant as hath in the tenancy an eſtate of fée ſimple, or fée tayle, either in his owne right, or in the right of an other. What a woman ſhall ſay.

For if a woman haue lands and tenements in fée ſimple, or fée tayle, which ſhee holdeth of her Lord by knights ſeruice, and taketh an husband, & hath iſſue, in this caſe the husband in the life of his wife, ſhall doe homage, becauſe he hath title to haue the lands by the curteſie of England, if he ouerliueth her, & alſo he holdeth them now in his wiues right: yet before iſſue had betweene them, the homage ſhall bee made in both their names. But if the woman dieth before any homage made in her What tenant ſhall homage.

life, and the husband keepeth still the landes as tenant by the curtesie, now hee shall not doe homage to his Lord, because he hath now an estate but for terme of life.

Fealtie. Fealtie, is as much to say, as fidelitie, or faithfulnesse, in dooing whereof the tenant shall

How a tenant shall do fealty. hold his hand vppon a Booke, and saie thus. Heare you this my Lord: I to you shall be faithfull and true, and faith to you shall beare for the lands and tenements, which I claime to holde of you, and duely shall doe to you the customes and seruices which I owe to doe to you at the termes assigned, as mee helpe God. And then hee shall kisse the booke. But he shall not kneele as hee that doth homage, nor doe such humble or reuerent seruice as is before declared in homage.

Diuersitie betweene homage & fealty. And ye shall obserue, that homage cannot bee done but to the Lord himselfe, whereas the Steward of the Lordes court or the Baylife may take fealty for the Lord.

Also tenant for terme of life shall doe fealtie, but homage as I said he cannot doe.

Now as concerning Escuage, that is to say, the seruice of the shield, yee shall vnderstand, that he that holdeth his landes by escuage, when the King maketh a voyage royall into Scotland for the subduing of the Scots, is bound to bee with the Kings Maiestie by the space of fortie dayes, well and conueniently arrayed and appointed for the warre: And he that holdeth his land but by the moytie of the fee of Knightes seruice, is bound by the force of his tenure to be with the King by the space of 20. dayes, and

so

so proportionably according to the rate & quantity of his tenure.

But now to our institute and purpose, after this voyage Royall into Scotland, in which the King goeth in person, and after his returne into England againe, a Parliament is wont to bee summoned, in which shall be prescribed & assessed what euery person that holde his land by homage, and went not with the King, neyther by himselfe nor by his deputie, shall pay to his Lord in satisfaction of his not seruing: and according to the taration hereof, euery tenaunt shall pay to his immediate Lord, whether it bee to the king or other, after the rate and portion of his tenure: if he holdeth by a whole fee, he shall pay the whole escuage, if by a moitie the halfe, if by the fourth part of a fee, the fourth part, &c. And this money thus assessed is called scutage, or escuage, for which the Lord to whome it is due, may very well for the non payment thereof distraine. But here it is to be noted, that some tenants by custome vsed time out of minde, are bound to pay but the moytie, or the third part of that, which shall bee assessed and limited by act of Parliament. Parliament. Distres of escuage.

Yea, and the custome is in some place, that to what summe of money soeuer Escuage is assessed, the Tenaunts shall pay neuer but such a certaine summe of money: and this kinde of escuage, is called escuage certaine, that is to say. where escuage is assessed by the Parliament, to a more or lesse summe, the Temant to pay to the Lord v. s. and no more nor no lesse, &c. such a tenure is called Socage tenure, & not knights Escuage certaine.

seruice, whereas the other is called escuage vncertaine.

Escuage vncertaine.

Finally ye shall vnderstand, that escuage vncertaine is alwayes adiudged to be knights seruice, and draweth vnto it, warde, mariage, and reliefe: but escuage certaine is not knights seruice, but is of the tenure of Socage, as shall bee hereafter more amply shewed.

Of Ward, Mariage, and Reliefe.

Chap. 24.

EVery Knightes seruice draweth vnto it, warde, Mariage, and Reliefe: wherfore it is now right expedient somwhat to entreate of them.

Warde.

Yee shall therefore be admonished, that when the tenant which holdeth his lands by knights seruice dyeth, his heyre male being at that time within the age of 21. yeeres, the Lord shall haue the ward, that is to say, the custodie or keeping of the landes so holden of him, to his owne vse and profit, till the heyre commeth to the full age of 21. yeeres. For the law here presumeth that till he come to his age, hee is not able to doe such seruice, as is of this tenure required.

Mariage.

Furthermore, if such heyre bee vnmaried at the time of the death of the tenant, then the Lord shall haue also the warde, and the bestowing of the mariage of him.

The full age of a woman.

But if a tenant by Knightes seruice dyeth, his heyre female being of the age of 14. yeares or aboue, then the Lord shall haue the warde neither of the land, ne yet of the body of such an heyre: and the reason hereof is, because a woman of that age, may haue a husband able to

doe

doe knights seruice, that is to say, to wait vpon the kings Maiesties person, when he goeth into Scotland with his army royall.

But if such an heyre female bee within age of 14. yeeres, and not maried at the time of the death of her auncestor, then the Lord shall haue the ward of the lande holden of him, till such heyre female commeth to the age of 16. yeares, by force of an act of Parliament in the statute of Westminster 1. cap 12.

Note that there is a great diuersity in the law, betweene the ages of females & of males, for the female hath these many ages appointed by the law. First at 7. yeeres of age the Lord her Father may distraine his tenaunts for aide to marry her. Secondly, at 9 yeeres of age, she is dowable. Thirdly, at 12 yeeres she is able to assent to Matrimonie. Fourthly at 14. yeeres she is able to haue her land, and shall bee out of ward, if shee be of this age at the death of her auncestor. Fiftly, at 16 yeeres shee shall be out of ward, though at the death of her auncestor she was within the age of 14. yeares. Sixtly, at 21. yeeres shee is able to make alienations of her landes or tenementes: whereas the man hath but two ages, the one at 14. yeeres to haue his landes holden in Socage, and to assent to Matrimonie, the other at 20. to make alienations.

Diuersity of age.

Age of a woman.

The age of a man.

Yee shall vnderstande that by the Statute of Merton, 6. Chap. it is enacted, that if in case the Lords do mary their wards to villains or others (whereby is disparagement,) if such heyres so married bee within the age of 14.

yeares, or such age that the saide ward cannot consent to the mariage, then if the friends of this heire complaine, and feele themselues grieued with this vnmeete mariage, the next of kinne to the heire, vnto whom the heritage cannot descend, may enter into the landes, and put out the Lord, which is gardeine in chiualrie: and if the next kinsman will not thus doe, another kinsman of the infant may doe it: and shall take the issues and profits to the behooke and vse of the heire, and shall yeelde accompt thereof vnto him when he commeth to his full age.

Accompt giuing.

Diuers disparagements.

And there bee diuers other disparagements which be not expressed in the said statute: as if the heyre being within age of consent, & in ward, bee maried to a decrepit person, or cripple, as to one that hath but one foote, or one hand, or that is a deformed creature, or hauing any horrible disease or continuall infirmitie: All these and such like be disparagements.

But here also ye shall vnderstand, that it shal be said no disparagement, vnlesse the heyre be so maried when he is within age of discretion, that is to say, within the age of 14. yeares. For if he be of that age or aboue, & assenteth to such mariage, it is no disparagement, neither shal the Lord for such mariage lose his ward, because it shalbe reputed & assigned to the folly of the heire being of age of discretion, to consent to such mariage.

Now if the Lord then being a gardein, offer to the heire being his warde, a conuenient mariage without disparagement, & the heyre refuseth it, as he may at his choise and election very well doe, then the Lord shall haue the value of

Value of mariage.

the

the mariage of such heyre, when he commeth to his full age. But yet if he marie himselfe being so in ward, against the will of his gardein, then he shall pay the double value by force of the statute of Merton before remembred.

Double value of mariage.

And yee shall note, that if lands holden by knights seruice descend to an infant or childe within age, from his mother, or from any of his auncestours, his father being yet aliue, in this case the Lord shall not haue the mariage of his heyre: for during the life of his father, the sonne shall be ward to no man.

One shall not bee ward liuing his father.

Finally, it is to be knowne, that he which is gardein in chiualry in right, may before he hath seised the ward, grant the same either by deed or without deed to another man, & then he to whom such a graunt is made, is called gardein in law.

Now as touching Reliefe, ye shall know, that if a man holdeth his land by knights seruice, & dyeth, his heire being of full age (the full age of the male is 21. yeeres, of the female 14.) then the Lord of whom the land is holden shall haue of the heyre reliefe.

Note yee, that all Earles, Barons, or other the Kings tenants (holding of him in chiefe by knights seruice) which die, their heyre being of full age at the time of their deaths, that is to say, 21. yeares of age, they ought to pay the olde reliefe for their inheritance: that is, the heyre or heyres of an Earle, for an whole Earledome 100. li. The heyre or heyres of a Baron for an whole Barony an 100. Markes. The heyre or heyres of a Knight, one 100. shillings, & he that hath lesse, shall giue lesse, according to the olde cu=

cuſtome of fees. Like lawe is obſerued of all others that hold of any other Lords immediately, vt ſupra.

Alſo a man may hold landes of a Lord by two knights fées, and then the heyre being of full age at the death of his auncestor, ſhall pay to his Lord for relieke x. pounds.

Seruice of Caſtle garde. Chap. 25.

YE ſhall vnderſtand, that a man may holde by knights ſeruice, and yet not hold by eſcuage, nor ſhall pay any eſcuage, for hee may holde by caſtle garde, that is to ſay, by ſeruice to keepe a tower of his Lords caſtle, or ſome other place, vpon a reaſonable warning. when his Lord heareth that enemies will come, or be alreadie come into England.

Ground in the law. This ſeruice is alſo knights ſeruice, & draweth to it, Ward, Mariage, and Relieke, as in all cales the common knights ſeruice doth.

Of graund Sergeanty. Chap. 26.

THere is alſo an other kinde of knightes ſeruice which is called graund ſergeanty, that is, where a man holdeth his lands or tenements of the king by ſuch ſeruice as he oweth in proper perſon to doe, as to beare the banner of our Soueraigne Lord the King, or his ſpeare, or to conduct his hoſt, or to be his Marſhall, or to be the ſewer, caruer, or butler, at the feaſt of the Coronation, or to be one of his Chamberlaines of the receipt of his Eſcheaquer, or to doe like ſeruice to the King in proper perſon, ſuch

such manner of seruice I say is called graund Sergeantie, that is to say, a great or high seruice: and the cause why it is so called, is because it is the most honourable & most worthy seruice that is: for he that holdeth by escuage, is not appointed by his tenure, to do any other more speciall seruice then another is bound that holdeth by escuage: but hee that holdeth by graund sergeanty, is bound to doe some speciall seruice to the king. The most high seruice.

Also if hee that holdeth of the king by graund sergeanty dieth, his heyre being of full age, then the heyre shall pay to the king for relefe, not only C. s. as hee that holdeth by escuage shall doe, but moreouer the cleare yearely value of those lands and tenements which so he holdeth of the king by graund sergeanty. Relefe of the tenant by grand sergeanty.

Furthermore ye shall obserue, that in ỹ Marches of Scotland, some men hold of the king by cornage, that is to say, blowing of a horne, to the intent to warn the men of the Countrey, when they hear that the Scots or other their enemies be comming, or be already entred into England, which seruice is also a kind of graund sergeanty. Graund sergeantie therefore is as much to say in Latin, as Magnum seruitium, that is to say, a great or high seruice. Like as petite sergeantie, is called Paruum seruitium, that is to say, a little or small seruice. Tenure by Cornage. Definition of Sergeanty.

But to reuert again to the matter, yee shall note, that if any tenant holdeth of any other lord then of the king by such seruice of cornage, then it is no graund sergeanty, but yet neuertheles, it is knights seruice, and draweth to it ward, mariage,

Rule in the law.

riage and relieke, for this is a rule infallible, that none can hold by graund sergeantie, but of the Kings Maiestie only.

Finally, ye shal vnderstand, that al they which hold of the king by this seruice called grand sergeanty, doe hold of the king by knights seruice, and by vertue of this tenure the king shall haue of them ward, mariage, and relieke: but escuage yet he shall not haue of them, vnlesse they holde by escuage of him by expresse speciall words.

Petie Sergeanty. Chap. 27.

Petite sergeanty is socage in effect.

TEnant by Petite Sergeantie, is hee that holdeth his land immediately of our soueraigne Lord the King by the manner of seruice to pay to the king yeerely, either a Bowe, a Speare, a Dagger, a payre of Gauntlets, a payre of Spurres of Gold, a Shaft, or such other small things appertaining to the warre: and this seruice is in effect but socage, because that such a tenant is not bound by his tenure to goe, ne doe any thing in his owne proper person, touching the warre, but only to render and pay yearelie certaine things to the King, as a man ought to pay rent. Wherefore this seruice of petite sergeanty is no knights seruice. But yet yee shall note that a man cannot hold eyther by Petie sergeanty, neither by Graundsergeanty, but of the king only.

Homage auncestrell. Chap. 28.

TEnant by homage auncestrell, is he which holdeth his land of his Lord by homage, and both hee and his auncestours whose heyre

he

hee is, haue holden the ſame land of the ſaide Lord, and of his aunceſtors time out of minde by homage, and haue done vnto them homage, and this is called homage aunceſtrell, by reaſon of the long continuance: which hath beene by title of preſcription, aſwell concerning the tenancie in the bloud of the tenaunt, as concerning the lordſhip in the Lord. And this ſeruice of homage aunceſtrel, draweth vnto it warranty: that is to ſay, if the Lord which is now in life, hath once receiued the homage of his tenant, hee ought to warrant the ſame tenant what time ſoeuer hee ſhall be impleaded or ſued, for ſuch lands ſo holden of him by homage aunceſtrell.

Warranty becauſe of homage aunceſtrel.

Moreouer, ſuch ſeruice of homage aunceſtrel, draweth vnto it acquit all, that is to ſay the lord ought to acquite the tenant againſt other Lords that can demaund any maner of ſeruice of the tenancie.

Wherefore if in this caſe the tenaunt which holdeth by homage aunceſtrell, bee impleated of his lands, and auoucheth, or calleth the Lord to warrantie, who commeth in by Proceſſe, and demaundeth of the tenaunt what hee hath to binde him to the warrantie, and the tenaunt ſheweth how he and his aunceſtors, whoſe heire hee is, haue holden his landes of him and of his aunceſtours time out of minde: ſurely the Lord if he cannot deny this, and if hee hath receiued the homage of ſuch a tenaunt, is bound by the Law to warrant him his land: ſo that if the tenaunt loſe his landes in default of the Lord thus auouched, that is to ſay, called to warrantie, hee ſhall recouer againſt him as much in

ualue of those landes and tenements which the Lord had at the time of calling to warrantie or at any time after. But if the Lord neuer receiued the homage of his tenant, then hee may very well when hee is thus vouched, disclaime in the Lordship or seigniory, and so put out the tenant of his warranty. Wherefore yee shall note, that in euery case where the Lord disclaimeth in his seigniory in Court of Record, his seigniory or Lordship is extinct, and the tenant shall holde from thencefoorth of the next Lord to him that thus disclaimeth.

Thus yee perceiue that homage auncestrel is not, but whereas is a long continuance, as wel in the bloud of the tenant in respect of his tenancy, as in the bloud of the Lord in respect of his seignorie. Wherefore if the tenant doth once alien his landes to an other, although hee purchase the same againe, yet hee shall not hold any longer by homage auncestrell, because of his discontinuance, but shall holde it now by the vulgar and accustomed homage.

Of Liueries. Chap. 29.

Tenant in chiefe of the king.

WHen one dieth which helde of the king by knights seruice in Capite, that is to say in chiefe, his heyre being within age, the king (as before is declared) shall haue the wardship and custody, aswel of the lands as of the body, that is to wit, the mariage if hee bee vnmaried. But if the heyre be of full age at the time of the death of such auncestor, yet shall the king by his prerogatiue royall haue primer seisin of all the landes, tenements, and other here-

Primer seisin.

ditaments,

ditaments, whereof such his tenant was seised in his demeane as of fee. And if such an heyre will enter into his lands when hée commeth to his full age, before he sue his liuery and receiue seisin by the king, no fréehold shall accrew nor growe vnto him, but he shal be deemed an intruder into the kings possession: yea, and if he die so seised in the meane time, his wife shall haue no dower of such land: wherefore it behooueth in any wise, that such heyre aswell male as female, comming to full age, before hee or she enter into their land, to sue liuerie. The manner and forme wherof according to the act of parliament lately promulgated and set foorth, I intend briefly to recite.

Intruder vpon the kings possession.

How heires ought to sue their Liueries, enacted 33. H. 8. cap. 21. Chap. 30.

NO person or persons hauing lands or tenements aboue the yeerely value of v. li. shall haue any liuerie before inquisition or office found before the Escheator or other Commissioner, by vertue of the kings writ of Diem clausit extremum, or Commission directed out of the Chauncery or other Courts, hauing authoritie to make such a writ or Commission, which shal not passe out of the same but by warrant, or bill assigned, & subscribed by the maister of wards or Liueries, the Surueior, Atturney, and Receiuer of the said Court, or three, two, or one of them, to bee directed and deliuered to the Chauncelor of England, or to any other Chauncelor or officer hauing power to awards such

Writ Dié clausit extremum.

such writs, and for the writing and sealing of the same, shall be paid the accustomed fees. But if the lands exceed not the said yeerely value of v. li. they shall pay for the seales of euery such writ or commission 8. d. & for the writing 6. d. and not aboue.

And the inquisitions and offices hereupon found, shall bee returned by the said Escheators, or Commissioners, into the same Court from whence the writ or Commission was awarded: which done, the clarkes of the petie bagge shall receiue the same offices, and make a transcript thereof to the Master of the wards and Liueries. And then the said Maister and the Surueyour, Atturney & generall Receiuer, or three of them, whereof the Master or surueyor to bee one, shall couenant and indent with such persons for their liuerie of the Castles, Manours, Lordships, landes, tenements, and hereditaments, comprised or not comprised in such offices, and shall make and set a rate and price of the same, and appoint the dates of payment thereof, by Obligation to be taken for the same to the king.

And euery bill, for any speciall or generall liuery assigned, by the hands of the said Maister, surueiour, atturney, receiuour, or three of them, whereof the Master or surueyour to bee one, shall be warrant sufficient to the Lord Chauncelor, or other Officer, hauing power to passe liueries vnder any of the kings seales accordingly. In which case the clarkes of the petty bagge, or other clarkes, by whom the liueries be written, shall receiue aswell for themselues, as for other,

other, such fées as haue béene accustomed.

Item euery person may sue at his pleasure a generall Liuery for any manours, lands, tenement, rents, reuersions, remainders, or other hereditaments, whereof the cleare yearely value shall not exceéde 20. li. Prouided that an office be thereof found, and a warrant first obtained of the said Master and others, as is aforesaid. Generall liuery.

And where such generall liuerie is sued, if the landes exceede the yeerelie value of v. li. they shall pay for the Seale 20. s. 4. d. and all other fées accustomed, as afterward shall be declared. But if they exceed not the yearely value of v. li. they shall pay but these fees following: that is to say, for the seale of the liuery 12. d. To the Clarkes of the petie bagge for the writing, and the inrolling 20. d. For the respect of the homage in the Hanaper 8. d. To the Lorde great Chamberlaine 20. d. To the Master of the Rolles 20. d. And the Clarke of the Liueries for the warrant and inrolling of the Liuerie 20. d.

Item no person or persons shall pay in the Exchequer, or any other Courts for the respect of homage, for any lands or hereditaments not exceeding the yearely value of v. li. aboue 8. d. And for the entring thereof, and warrant of atturney, aboue 4. d. Respect of homage.

And the value of such landes and hereditaments not exceeding the yearely value of 20. li. shall bee taken as it is limitted in the offices founden thereof, exrept by the examinations and certificate of the said Master, Surueyour, Atturney and receiuor, or thrée of them, it shall

others

otherwise appeare and be declared in any of the kings Courts.

Also no Escheatour shall sit only by vertue of his office, for inquiry of the tenure, title, or value of any lands or other hereditaments holden of the king, being of the yearely value of v. li. or aboue, without the kings writ to him directed, vpon paine to forfeit v. li. for euery time hee shall so do. Neither shall hee take for the finding of any office of lands not exceeding the yeerely value of v. li. aboue 15. s. that is to say, 6 s. 8. d. for his owne fee, and 3. s. 4. d. for the writing of the office. And for the charges of the Jury 3. s. And for the officers that shall receiue the offices in any Court of record 2. s. vpon paine that the Escheator doing otherwise, shall for euery time forfeit v. li. And vpon like paine the officers of euery Court of record where such inquisitions shall bee returned, being offered vnto them, within one month next after the finding thereof, shall receiue them. The one moity of all which forfeitures to the king, and the other to the party that will sue for the same, &c.

Paine of forfait.

Fees of office.

And they which hereafter shall bee in case to sue liuery, whose lands and tenements exceede not the yeerely value of v. li. may lawfully sue foorth that generall liuery by warrant from the saide Courts, as is aforesaide, although none other inquisition bee thereof had nor certified, paying neuertheles the fees aboue remembred.

Finally, euery person shall sue foorth his patent for his liuery, within three moneths next after the assignement of his bill, or else his bill

assigned

assigned to be void and of none effect.

Hereafter ensueth the fees accustomed of the generall Liueries.

FIrst to the Clarks of the pety bagge, for the respect of homage and fealty, the writing and inrolling 4. s. 2. d. To the Lord great Chamberlaine 40. s. To the Master of the Rolles 3. li. To the Clarkes of the liueries for writing of the Indentures and Obligations 20. s. beside counsel.

The fees of the speciall Liuerie accustomed to be paid, be these following, that is to say, for the Signet 3 li. 10. s For the priue seale 30 s. For the great seale 43 s. 8. d. To the clarks of the petie bagge. 40. s. To the Master of the Liueries clarks 40. s. For inrollment of the knowledge of the Indenture, 12. s. To the lord great Chamberlaine of England 40. s: For the writ of the allowance for the same liuerie 10 s. 6 d.

And note yee, that sometime in especiall cases the fees be more, and sometime lesse, as the case and matter doth require.

Hitherto haue we briefly touched all kinds of knights seruice, and things incident to the same. Now will we with like briefenes declare the other kinds of seruices which commonly be comprised vnder the generall name of Socage. For all lands or tenements, either they be holden by knightes seruice, or else by socage tenure, or at least by the nature of Socage tenure, which in effect is all one. Wherefore first we shall define what Socage is in the proper signification: which done, we shall peruse the other kindes of seruice which be of the nature of Socage tenure.

Of Socage.

Chap. 31.

What socage tenure is.

SOcage is properly where the tenaunt is bound to come with his poke, that is. with his plowe to eare and sowe a parcell of the demeane landes of his Lord, which seruice in auncient time was very common, but now by the mutuall consent. both of the Lord and the tenaunt, it is converted for the most part into a yearely rent. Howbeit, the name of Socage abideth still. wherefore now, all that is not knights seruice, is called by the name of socage. So that if a man holdeth by fealty onely, or by fealty and homage for all maner of seruice, it is but socage tenure. for homage alone maketh not knights seruice. Also if a man holdeth by escuage certaine, as I haue said heretofore, hee holdeth in effect but by Socage.

Gardeine in socage.

Now where as a man holdeth his lands by Socage and dieth, his heyre being within the age of 14. yeeres, the Lord shall not haue the ward, but the next of kin to the heyre, to whom the heritage cannot descend, shall haue the title and wardship, as well of the land, as of the heire, till the heire come to the age of 14. yeares. And such tutor or gardeine is called gardeine in socage, and shall render accounts to the heire, of the issues and profits that hee hath receiued of the lands during such time, deducting his reasonable costes and expences: so that hee shall not haue the wardship to his owne vse and profit, as the Lord which is gardeine in chiualry hath.

And in case the gardeine in socage dyeth before hee hath made his accompt, the heyre is

without

without remedie, because no writ of account lieth against the executors but for the king only.

Finally, ye shall understand, that when tenant in Socage dyeth, the Lord of whome the land is held shall haue relefe, that is to say, the value of the rent that is yeerely due vnto him of the tenancy, beside the yearely rent, so that in effect after the death of his tenant, hee shall haue of the heire two rents, saue that for the relefe he may distraine forthwith, but for the accustomed rent he cannot distraine til the vsuall day of payment be come. Rent. Distresse.

Franke almoigne. Chap. 32.

TEnaunt in franke Almoigne, that is to say in free Almes, is where a Bishop, Deane, or any other Ecclesiasticall person holdeth of his Lord in pure and perpetuall Almes, and such tenure began first in old time after this manner. When a man was seised in auncient time of certaine landes and tenements in his demesne, as of fee, and of the same tenements infeoffed an Abbot and his Couent, or a Prior and his Couent, or any other person Ecclesiasticall, as a Deane of a Colledge, Master of an Hospitall, or such like, to haue and to hold the same lands to them and to their successours for euer, in pure and perpetuall Almes, or in franke Almes, in these two cases the tenements should be holden in franke Almoigne. The first foundatiō of franke almoigne.

By force of which tenure, they that holde in franke Almoigne after this sort, bee bound of

right before God, to make orisons and prayers, & to do other diuine seruices for the soules of their graunters & feoffors, and for the soules of their heyres which be dead, and for the prosperous estate of them and their heyres, whilst they be aliue. And because of right they bee bound to this diuine seruice, they be discharged by the law to do any other prophane or corporall seruice, as fealty, or such other like.

Tenant in franke almoigne shall doe no fealtie.

But neuertheless, if such as hold their tenements in franke almoigne, doe omit & leaue vndone these diuine seruices whereunto they bee bound before God, the Lorde cannot distraine them, ne yet compel them by any other means by the course of the common law: but the only remedy is to complaine of them to their ordinary, who of right ought to compell such Ecclesiastical persons to doe the diuine seruice due as aforesaid.

Tenant by diuine seruice.

But here yee shall note, that if a Parson of a Church or any other Ecclesiasticall person, did before the statutes of dissolution of Abbeys, Monasteries, &c hold of the Lord by certaine diuine seruice to be done, as to sing masse euery fryday in the weeke, or Placebo and Dirige, or to finde a priest to sing masse, or to distribute in almes C. pence to a hundred men at such a day, in al these cases if such diuine seruice be vndone, the Lord may very well distraine, because the seruice is put here in certaine.

Distresse for diuine seruice.

Now as I saide before, if in olde time a man did enfeoffe such Ecclesiastical person after such sort, he should holde his lands in franke almoigne. But at this day it is otherwise: for by the reason of the estatute called, Quia emptores

terrarum

terrarum. Westm. 3. cap. 1. No man can alien ne graunt landes or tenements in fée simple, to hold of himselfe, so that now if a man beeing seised of landes in fee simple, granteth the same by licence to an Ecclesiasticall person in franke almoigne, these words franke almoigne bee voide, and the Ecclesiastical person shal hold them immediately of the lord of the feoffor by the same services that the feoffor held, so that no man can hold in franke almoigne but by force of a grant made before the said Statute, only the K. Maiesty excepted, for he is out of the compasse of the Statute.

Finally, ye shal note, that whereas a man holdeth in franke almoigne, his Lord is bound by the lawe to acquite him of all manner of service that any other Lorde can haue or demaund out of the saide lands, so that if hee doth not acquite him, but suffer him to be distrained, then he shal haue against his Lord a certaine writ, called a writ of mesne, and shall recouer against him his damages and costs of his suit. Writ of mesne.

Of Burgage. Chap. 27.

A Tenure in Burgage, is where an ancient Borough is, of which the king is Lorde, and they which haue Tenements within the same borough, hold the same of the king, paying a certaine yearely rent, which tenure in effect is but socage tenure. Likewise it is, whereas any other Lord, Spirituall or Temporall, is Lord of such Borough Socage tenure.

Heere ye shall note, that for the most part such auncient Boroughs and Townes haue diuers Customes and Vsages which other Townes Custome.

haue not. For some boroughes haue a custome, that the youngest sonne shall inherite before the eldest, which custome is called commonly Borough English.

Dower by custome.

Also in some borough by the custome, the woman shall haue for her dowrie all the lands and tenements whereof her husband was seised at any time during the matrimony and couerture.

Deuise by custome of Borough.

Moreouer, in some boroughs a man may bequeath or deuise his lands or tenements by testament at the time of his death, and by force of such deuise or legacy, he to whom the bequest is made after the death of the testator which made such testament, may by force of this auncient custome enter into the lands so to him bequeathed or deuised, without any liuerie of seisin to him made, or further ceremonie of law.

Howbeit, how & in what manner a man may at this day deuise his lands by his last will and testament, by force of a certaine new Statute, it shall be hereafter declared.

Diuers other customes in England there bee contrary to the course of the common law, which if they be any thing probable, & may stand with reason, are good and effectuall, notwithstanding they be against the common law.

And note that no custome is allowable, but such custome as hath beene vsed by title of prescription, or time out of minde.

Of Villenage, or bond seruice. Chap. 34.

A Tenant in Villenage, is properly, when a Villaine, that is to say, a Bondman holdeth of his Lord, whose Bondman he

he is, certaine landes or tenements, according to the cuſtome of the manour, or otherwiſe at the will of his Lord, and to do his Lord villaine ſeruice, as for to beare and carrie the dung of his Lords out of the City, or out of his Lordes manour, and to lay it vpon the demeane lands of the Lord, or to doe ſuch like ſeruice and villaines ſeruice. Howbeit, freemen in ſome places holde their tenements and landes of their Lords by cuſtome, by ſuch ſort of ſeruice, and their tenure is called tenure in villenage, and yet they themſelues be no villaines, nor of ſeruile condition, but free-men. For the land holden in villenage maketh not the tenant a villaine, but contrariwiſe, a villaine maie make free land to be villaine land vnto his Lord. As if a villaine purchaſeth land in fee ſimple, or fee taple, the Lord of the villaine may enter into the land ſo purchaſed by the bondman, and put him and his heires out for euer: and this done, the Lord if hee will, may leaſe the ſame land to his villaine, to hold of him in villenage.

And heere yee ſhall vnderſtand, that ſeruitude or villenage, is the ordinaunce not of the law of nature, but of the Law, which is called Ius gentium, by which a man is made ſubiect contrary to nature, vnto another mans dominion. For hee that is a villaine or bondman, eyther hee is ſo by title of preſcription, that is to ſay, hee and his auncеſtours haue beene villaines time out of minde, or elſe hee is a villaine by his owne confeſſion in ſome court of record: ſo that all villaines, eyther they bee borne villaines, or elſe they bee made ſo. They bee

borne villaines, when their father being a bond man himselfe, begetteth them in lawfull wedlocke, either of a free woman, or of a bond woman, for so that the father bee bond, the issue of him lawfully begotten must needes bee bond by the Lawes of England, hauing no regard to the condition of the mother, whereas in the ciuill Law of the Romanes, it is cleane contrary: for there, partus sequitur ventrem. that is to say, the seruitude or bondage of the mother maketh the childe bond, and not the bondage of the father.

Bastard. Howbeit, the bastard sonne of a bond man shall not be bond, & the reason is, because a bastard is Nullius filius in the law, that is to say, no mans sonne.

They bee made bondmen or villaines two wayes, either by their owne proper act, as when a free person being of full age, will come into a Court of record, and there confesseth himselfe bond to another man.

Or else by the Lawes of Armes called Ius gentium, as when a man is taken prisoner in warres, and is compelled to serue and become the thrall and bondman of him that tooke him, the law calleth such a person a villaine, that is to say, a slaue and thrall.

Diuisiō of Villaines. And yee shall note, that villaines be properly called in latine Serui, because that when they be taken in warre, the Captaines be wont not to kill them, but to sell them, & so to saue their liues, so that they be called Serui a seruiendo that is to say, of seruing. They be called Mancipii a manu capiendo, because they bee taken by hand and power of their enemies.

Now

Now as I saide by the lawe of Nature, wee are borne free, but after that by the lawe of Gentiles, seruitude or bondage did presse and inuade the worlde, then ensued the benefite of Manumission. Manumission is, quasi de manu emissio, that is to say, a giuing out of the hand or power. For so long as a man is in bondage and seruitude, he is subiect to the hand & power of an other, and when he is manumitted, hee is made free, and deliuered from the said power, so that a manumission is to say, a writing testifying that the Lord hath infranchised his villain, and all his offspring and sequell. Manumission.

Also if the Lord maketh to his bondman an Obligation of a certaine summe of money, or graunteth to him by his deede an annuitie or yeerelie pension, or leaseth to him by deed landes or tenements for terme of yeares, any of these actes do imply an infranchisment. What acts maketh Manumissiō in Law.

Likewise, if the Lord maketh a feoffement to his villaine, and maketh vnto him liuerie of seisin, this also is an infranchisement and secret Manumission. Briefly to speake, whersoeuer the Lord compelleth his villaine by the course of the Lawe to doe that thing, that hee might otherwise inforce him to doe or to suffer, without the authority and compulsion of the lawe, he doth by implycation infranchise his villaine, as if the Lord will bring against his villaine an action of debt, an action of account, of Couenant, or of Trespas these and such like be in the eye of the Law infranchisments & Manumissions, because that the Lorde in all these cases may haue the effect & purpose of his suite, that Causes of infranchisement.

that is to ſay, the goods cattels, and correction of his bondman, without the compulſion of the law, euen by his owne proper power and authoritie which he hath vpon his villaine. But if the Lord doth ſue his villaine by an appeale of felonie, the villaine being lawfully indicted of the ſame before, this is no recite manumiſſion or infranchiſement, for the Lord though he haue power to beate his villaine, and to ſpoyle him of his goods, yet hee cannot by the Lawe of this Realme put him to death.

Yee ſhall alſo vnderſtand, that if a mans bondman purchaſe landes, or acquire and get vnto him any other thing, the Lord may forthwith enter and ſeiſe the ſame into his owne handes. Wherefore if the Lord will bring againſt his villaine a Præcipe quod reddat, by which he demaundeth againſt his villaine any landes or tenements, this implyeth an infranchiſement, forasmuch as he bindeth himſelfe to the preſcript and authority of the law, whereas he might vſe his owne authoritie by entring and ſeiſing the ſaid lands.

Finally, yee ſhall marke, that ſome villaines bee called villaines in groſſe, and other ſome be called villaines regardant. In groſſe bee they of which the Lord is ſeuerally ſeiſed, and not by reaſon of any Lordſhip or manor, but they be called regardant which doe belong to a manor of which the Lord is ſeiſed and the ſaide villaines haue bin regardant, that is to ſay, expectant and attendant, time out of mind, to the Lord of the ſaid manour, in doing vnto him ſuch ſeruices as to a villaine appertaineth.

Of auncient demeſne. Chap. 35.

There is alſo a certaine kinde of tenure, which is called auncient demeſne, and thoſe tenaunts which holde by this ſeruice, bee free-holders, and by charter, and not by copie of court Roll, or by the Verge after the cuſtome of the Manor, at the will of the Lord. And theſe tenants be ſuch as hold of thoſe manors which were S. Edwards the king, or which were in the hands of K. William the Conquerour, and theſe manors bee called the ancient demeſnes of the king, or the ancient demeſnes of the crowne of England. And to ſuch tenants which hold of ſuch manors, bee many & diuers liberties giuen and graunted by the lawe, as to bee quite of toll and paſſage, and ſuch like impoſitions, which be demaunded of men for their goods and cattels, ſold or bought in faires & markets by them. alſo to bee quite and free of tare and tallage granted by Parliament, except that the kings Maieſty doe tare auncient demeſne, as to him onely appertaineth when he thinketh good for great and vrgent conſiderations. Tenaunts alſo of auncient demeſne, ought to be quite of payments to the erpences and charges of the knights which come to the Parliament, alſo they ought not to be impanelled nor put in Juries and Enqueſts in the country, out of their manors or ſeignorie of auncient demeſne, for the lands which they hold of ſuch manor, vnles they haue other lands at the common lawe, for which they ought to bee charged. And if ſuch tenants, or any of them

which

which holde of the Manor of anncient demeſne be diſtrained to doe vnto their Lord other ſeruices or cuſtomes then they or their auncestors haue vſed to doe, then may they ſue a certaine writ called a Monſtrauerunt, directed to the Lord, commaunding him that he diſtraine them not for to do other ſeruice or cuſtomes then they haue bin accuſtomed to do.

Writ of Monſtrauerunt.

And for further knowledge hereof, ye ſhal vnderſtand, that in the Exchequer there is a booke called Domeſday, which booke was made in the time of the ſaid S. Edward. And all the lands that were in the ſeiſin, & in the hands of the ſaid S. Edward at the time of the making of the ſaid book be auncient demeſne.

But the lands which then were in other mens hands, though they be written in the ſaid booke, be franke fée, and no auncient demeſne.

Frank fee.

Finally, it is to be noted, that tenants of ancient demeſne ſhall not be impleaded for their ſaid lands out of the manor whereof they ſo hold, and if they be, they may ſhew the matter & abate the writ. But if they once anſwere to the writ, and iudgement giuen, then the lands haue loſt the nature & benefit of ancient demeſne, and are become franke fée, that is to ſay, pleadable at the Common Law for euermore. And thus haue we ſpoken of the diuerſitie of tenures.

Abatemẽt of a Writ.

Of Rents. Chap. 26.

FOraſmuch as vpon euery tenure there is commonly reſerued one rent or other, therefore I thinke it good ſomewhat to treate of Rents. But yée muſt vnderſtand, that there be ſundry

sundry sorts of rents. There is one kinde of rent which is called Rent seruice. Another which is called Charge, and the third which is named in French, Rent secke, that is to say in latine, Redditus siccus a drie rent. Now rent seruice is so called, because it is knit to the tenure, and is as it were a seruice whereby a man holdeth his lands or tenements, or at the least way when the rents be vnseuerably coupled & knit with the seruice: as for an example, where the tenant holdeth his land of the king, or of any other Lord by fealtie & by certaine rent, or by homage, fealty, and by certaine rent, or by any other sorts of seruices & by certain rent, this rent is called rent seruice. And heere ye shall note, that if this rent seruice bee at any time when it ought to be paide, is behind and vnpaid, the Lord of whom the land or tenement is so holden, whether it be in fee simple, fee taile, for terme of life, for yeeres, or at will, may of common right enter and distraine for the rent, though there be no mention at all, ne clause of distresse put in the deede or lease. I said before that the nature of this rent seruice is to bee coupled and knit to the tenure. For where no tenure is, there can be no rent seruice. And therefore if at this day I bee seised of landes of fee simple, and make a deede of feoffement of the same to another in fee simple, reseruing by the same deede a rent, this can be called no rent seruice, because there can bee now no tenure betweene the feoffour and the feoffee. Otherwise it is of feoffements in fee simple made before the Statute of westminster the third, cap. 1. called Quia emptores terrarum. For before the making

Diuision of rent seruice.

Distresse of cõmon right.

making of that statute, if a man had made a feoffment in fee simple, reseruing to him a certaine rent, yea though it had beene without deede, there had bin begun & created a new tenure betweene the feoffor and the feoffee, and the feoffee should haue holden of the feoffor, who by vertue of the same might of common right haue distrained for such rent. But at this day by force of the said act there can bee no such holding or tenure created or begun, & consequently, no rent seruice can bee at this day reserued vpon any gift in fee simple, except it be in the kings case, who being chiefe Lord of all, euer might and may, giue landes to be holden of him. Thus ye see, that at this day, no subiect can reserue any rent seruice vnto him, vnles the reuersion of the lands or tenements that he shall grant, be still to him, as where he granteth them in fee taile, or maketh but a Lease for terme of life, or for certaine yeeres, or else at will.

For in all these cases the reuersion of the fee simple remaineth still in him, and therfore if here be any rent reserued, it is to bee called a rent seruice, and is of common right distrainable, though there be no clause of distresse in the deed of feoffement or lease.

But here ye will aske me, when in the case before remembred, a man at this day giueth clean away the land or tenement from himselfe in fee simple, so that there is no maner of reuersion of the same remaining in him at all, & yet neuertheless reserueth vnto him by his deede a certaine rent, what manner of rent shall this be called: I answere, if there bee in the deede indented any clause of distresse, that is, that if the rent be be-

hinde

hinde vnpayed, it shall be lawfull for the feoffour to enter, & to distraine, it is called a rent charge, for as much as the land is charged therewith, but howe of common right no, but only by vertue and force of the writing. But on the other side, if there be no such clause of distresse put in the Indenture, then the rent so reserued shall be called a rent secke. Charge.

Likewise, if a man that is seised of certaine lands, will graunt eyther by Indenture, or by deede Poll, that is to say, single and not indented, a pearely rent out of the same landes to an other, whether it bee in fee simple, fee tayle, for terme of life, for yeares, or at will, with clause of distres, then this rent is called a rent charge, & hee to whom such rent is graunted, may for default of payment thereof enter & distraine. But contrary, if the graunt bee made without any such clause of distresse, it is called a rent secke, that is to say, a drie rent, because he cannot come to it, in case it be denyed by way of distresse, in so much that if he were neuer seised of it, he is by the course of the common law without remedy. Otherwise it is of a rent charge, for heere he to whom the graunt is made when the rent is behind, may chuse whether hee will sue a writ of Annuity against the grantor, or distraine for the rent behind, & retaine the distresse, till the time he be payed accordingly. But hee cannot haue both remedies together, but must take him to the one, for if he once recouer by a writ of Annuity, then is the land discharged. And if he sue not his writ of Annuity but distraine for the arrerages, and the tenant sueth a replevin, whereupon the other Annuitie.

auoweth

Eſtopple.

auoweth the taking of the diſtres in court of re-
cord, then is the land charged, & the perſon of the
graunter diſcharged of the action of annuitie.

Yee ſhall alſo vnderſtand, that if a man will that an other ſhall haue a rent charge comming out of his land, and yet will not that his perſon ſhal be by any meanes charged by writ of annuitie, hee may then haue ſuch clauſe in the ende of his deed. Prouiſo quod præſens ſcriptum, nec quicquam in eo contentũ vllo pacto ſe extendat ad onerandum perſonam meam, per breue ſeu actionem de annuitate, ſed tantummodo valeat ad onerandũ terras, fundos, & tenementa mea, de annuo reddítu prædicto. If this or ſuch like clauſe be added, then the land is charged, & the perſon of the grantor is diſcharged.

Prouiſo.

Alſo if a man will make a deede of graunt in this wiſe, that if John at Stile bee not yearely payed at the feaſt of Chriſtmas for terme of his life 20. ſhillings ſterling, that then it ſhall bee lawfull for the ſaide John at Stile, to diſtraine for it in the manor of Dale, this is a good rent charge, becauſe the manor is charged with the rent by way of diſtres, & yet neuertheles in this caſe the perſon of him that made ſuch deede is diſcharged of an action of annuity, foraſmuch as he graunted not by his deede any annuitie to the ſaid John at Stile, but onely graunted that he might diſtraine for yearely rent.

Furthermore, ye ſhal note, that if a man hath a rent charge to him and to his heires comming out of certaine landes, and dooth purchaſe any parcell of theſe landes, to him and to his heyres, in this caſe the whole rent charge is que-

quenched and gone, and the annuity also, the cause is this, that a rent charge cannot bee in such case appoꝛcioned. Otherwise it is of a rent seruice, as foꝛ example, if one which hath a rent seruice of 20. d by yeare, booth purchase parcell of the land, out of which this yearely rent of 20. d. is comming, this shall not extinguish oꝛ doꝛowne the whole rent, but foꝛ the parcell onely. Foꝛ rent seruice in such a case may very well bee appoꝛcioned and rated accoꝛding to the value of the land. Yet there be some soꝛts of rents seruices, which in no wise can bee appoꝛcioned. As where a tenant holdeth his land of his Loꝛd by the seruice, to render to the Loꝛd yearely at such a feast, an hoꝛse lading of gold, a red rose, a gylliuer, oꝛ such like, if in this case the Loꝛd booth purchase parcell of the land thus of him holden, this seruice is gone, because such seruice cannot be seuered and appoꝛcioned. Also Elcuage is a seruice that may be very well appoꝛcioned, accoꝛding to the difference and rate of the land.

Extinguishment.

Rent seruice cannot be appoꝛcioned.

But where any land is holden by homage and fealtie, if the Loꝛd purchase parcell of the land, yet he shall haue his homage and fealty still of his tenant.

Ye shall marke also, that if a man maketh a lease of lands to another foꝛ terme of life, reseruing to him certaine rent, if in this case he granteth that rent to Iohn at Stile, hauing to himselfe the reuersion of the said land, this rent is but rent secke, because Iohn at Stile that hath the rent, hath nothing in reuersion of the land.

But if he graunteth the reuersion of the land

to John at Noke for terme of life, and the tenant atturneth accordingly, then hath John at Noke the rent as rent seruice, because hee hath the reuersion for terme of his life.

Rent is incident to a reuersion.

Likewise it is, if a man giueth lands or tenements in tayle, reserumg to him & to his heyres certaine rent, or maketh a lease of the land for terme of life, reseruing certaine rent, if he granteth the reuersion to another, and the tenant atturneth accordingly, the whole rent and seruice shall passe by this word Reuersion, because the rent and seruice in such case bee incident to the reuersion, and doe passe by the graunt of the reuersion But if he had graunted the rent onely, it had bẽn a rent secke.

What remedie a man hath to recouer his Rent when it is behind. Chap. 37.

I Shewed you before, that for a rent seruice if it be behinde, yee may distraine in the ground, euen of common right, though there bee no such clause of distresse mentioned in the deede of feoffement, graunt, or lease.

Also for a rent charge ye may distrain, or bring your writ of annuity, at your choice and election, as before is declared. But of a rent secke if yee were neuer seised of it, nor of any parcell thereof, yee be without remedy by course of the common Lawe, for yee cannot distraine for it, nor yet bring your writ of annuity: but if yee were once seised of it, or of parcell thereof, & it is eftsoones behind, then your remedy shall be this, yee must goe eyther by your selfe, or by your de-

puty

putie to the land or tenement out of which the rent is comming, and there demaund the arrerages of the rent, which if the tenant denie to paie, this denial is disseisin of the rent. Also if the tenant be not then ready to pay it, this countervaileth a denial, which is a disseisin. Disseisin of rent secke.

Moreouer, if neither the tenaunt nor no other man be remaining vpon the ground to pay the rent when yee demaund the arrerages, this also is a denial in the lawe, and is in very deed a disseisin. And for these disseisins ye may haue an assise of Nouel disseisin against the tenaunt, and shall recouer seisin of the rent, and the arrerages and your damages and costes of your writ, and of your plea. And if after such recouerie and execution had, the rent be againe at an other time denied you, then ye may haue a writ of Redisseisin, and shall recouer your double damages, &c. Assise. In redisseisin double damages

It shalbe therefore wisedome for a man when a rent is graunted by any person vnto him, to take the tenaunt of the lande a penie or an halfe penie in name of seisin of the rent, and then if at the next day of paiment the rent be denied him, he may haue an assise of Nouel disseisin. And ye shall note, that there be three causes of disseisin of rent seruice, that is to wit, rescous, repleuin, and inclosure. Rescous is, when the Lord vpon the lande holden of him distraineth for his rent behinde, and the distresse bee rescued from him, or if the Lord come vpon the lande to distraine, and the tenaunt or any other man for him will not suffer him, that is called Rescous. Three causes of disseisin of rent seruice.

Repleuin. Repleuin is, when the Lord hath distrained and repleuin is made of the distresse by writ, or by plaint. Enclosure. Enclosure is, where landes or tenements be so inclosed, that the Lord cannot come within the lands or tenements for to distraine. And the chiefe cause why such things so made be disseisin to the Lord, is forasmuch as the Lord is by this way disturbed of the meane & remedie whereby hee ought to come and haue his rent, that is to wit, by distresse.

Foure causes of disseisin of rent charge. And there bee foure cases of disseisin of rent charge, that is to wit, rescous, repleuin, enclosure & denier. For denier, or deniall, is as well a disseisin of a rent charge, as it is of rent seck. Finally, ye shall vnderstand, that there be 2. causes of disseisin of rent seck, that is, denial & inclosure.

And two of rent secke. And it seemeth that there is yet another cause of disseisin of all the three rents aforesaid, that is to wit this; when the Lord commeth to the land holden of him, or when hee that hath a rent charge, or a rent secke, commeth to the land to distrain for the rent behind, or to demand ỹ rent, and the tenant hearing this, incountreth him, & forestalleth him the way with force and armes, and manasseth him in such sort, as hee dare not come to the ground for to distraine for his rent behinde for feare of death or mutilation of his members. This is a disseisin, because the partie is disturbed of his meane. and lawfull remedie whereby he ought to come to his rent.

Finally, ye shall obserue and marke, that by an act of Parliament made in the 22. yeare of our Soueraigne Lord K. Henrie the eight, it is lawfull for the executours and administratours

tours of tenants in fee simple, tenaunts in fee tayle, tenants for terme of life, of rent seruices, rent charge rent seckes, and of fee farmes, for arrerages of such rents as were due vnto their testators in their liues, either to distraine for the same, or at their election to bring an action of Debt, except in such Lordships in Wales, or in the Marches thereof, whereas the tenants haue vsed time out of minde to pay vnto euery Lord at his first entrie into the Lordship any summe of mony, for the redemption of all maner of outceries and penalties incurred at any time before the Lords entrie. Distresse, or action of debt.

Also by force of the said act, the husband which was seised in the right of his wife, may after the death of his wife eyther distraine, or bring an action of debt for the arrerages of such rents as were due and vnpaied in her life.

Likewise it is of him that hath a rent for terme of another mans life: if he for terme of whose life he hath the rent, dyeth, yet by vertue of the said Act, he or his executors & administrators, may eyther distraine or bring an action of Debt for the arrerages due before the death of him, for terme of whose life he had the rent.

How auowries ought to be made of Rents and Seruices, enacted An. 21. H. 8. Chap. 38.

WHere any lands bee holden of any person by rents, customes, or seruices, if the Lorde distraine vppon the same lands for any such rents, customes, or seruices, and Repleuin thereof bee sued, the Lord may

auowe, or his baylife or seruant may make conisance, or iustifie the taking vpon the same lands, as within his fee and seignorie, alledging in the said auowrie, conisance or iustification, the same landes to bee holden of him without naming any person certaine to be tenant of the same, & without making any auowrie, iustification, or conisance vpon any person certaine. And likewise vpon euery writ sued of the second deliuerance. And they that make any such auowrie, iustification, or conisance, if the same auowrie, conisance, or iustification bee found for them, or the plaintife be non suite, or otherwise barred, then they shall recouer their whole damages and costes.

Also the saide plaintifes and defendants shall haue like plees, and one aide priet (plees of disclaimer only except) as they might haue had before the making of this act.

Plees in auowrie.

Also such persons as by the common law may ioyne to the plaintife or defendant in the saide writs of Replegiare or second deliuerance, as well without Proces as by Proces, shall from henceforth also in this case ioyne vnto them, aswell without processe as by processe, and haue like plees & like aduantages in all things (disclaimer onely except) as they might haue by the common law before this act.

An act for the assurance of farmours, made An. 32. H. 8. Chap. 39.

ALl Leases hereafter to bee made of any landes, or other hereditaments, by writing indented vnder seale, for terme of yeeres, or for terme of life, by any persons being of

of the age of 21. yeares, hauing any estate of inheritance, eyther in fee simple, or in fee tayle, in their owne right, or in the right of their churches, or wiues, or ioyntly with their wiues, shal bee good and effectuall against the lessours, their wiues, heyres, and successors, according to the estate comprised in such Indenture of lease.

Prouided that this act shall neither extende to any leases to be made of any landes, or hereditaments, being in the hands of the farmours, by vertue of any olde lease, vnlesse the same olde lease bee expired, surrendred, or ended, within one yeare after the making of the new lease, nor yet to any graunt to be made of the reuersion of any lands or hereditaments, or to any lease of such lands or hereditaments, as haue not commonly beene letten to farme by the space of 20. yeares next before such lease thereof made, nor to any leases to be made without impeachment of waste, nor to any lease to be made aboue the number of 21. yeares, or three liues at the most from the day of the making therof. And that vpō such lease be reserved yearely during the same, due & payable to the lessors, their heirs & successors, to whom the land should haue come after the death of the successors, & to whom the reuersion therof shall pertaine, according to their estates & interestes, so much yerely rent or more, as hath been accustomably yēlded for ỹ same, within 20. yeers next before such leases, and that he to whom the reuersion thereof shall appertaine, after the death of such lessors, or their heires, shall haue such like remedy & aduantage against their farmours thereof, their executors and assignes, as the

lessor himselfe should haue had.

The wife shalbe party to the leale.

Prouided also, that the wife be made party to euery such lease as shall be made by her husband of any lands being the inheritance of the wife, and that euerie such lease be made by Indenture in the name of the husband and his wife, and she to seale thereunto. And that the rent be reserued to the husband & wife, & to the heires of the wife, according to her state of Inheritance therein. And that the husband shall in no wise alien, discharge, grant, or giue away the same rent reserued, nor any part thereof, longer then during the couerture, without it be by fine leuied by the said husband and wife.

Prouided furthermore, that this act extend not to giue libertie or power to any persons to take any moe farmes, leases, or taking of anie lands, or other heriditaments, then they might haue done before the making of this act: nor yet extend to giue any libertie to any Parson or Vicar of any Church or vicarage, for to make any leale or grant of any of their messuages, lands, tenements, tithes, profits, or hereditaments, belonging to their Churches or vicarages, otherwise then they might haue done before the making hereof, Anno. 27. H 8.

What grāt by a Corporation is good.

It is furthermore enacted, that the graunt, lease, or gift, or election of the gouernour or ruler of any hospitall, colledge, deanerie, or other Corporation, with the assent of the more part of such of the same as haue voyce thereunto, shall bee good and effectuall, any rule or statute made by any founder to the contrarie notwithstanding.

Of

Of falsifying of the recoueries by Farmors, enacted An. 21. H. 8. Chap. 40.

ALl Farmours or Lessées for terme of yeeres may falsifie for their terme onelie recoueries had by fained titles, as well as tenaunt in free holde. And the same farmours, their executors and assignes, shal enioy their said termes, according to their leases, against such recoueries, euen as if none such had been suffered. In which case, neuertheless the recouerer, after such recouery had, shall haue like remedie against the farmours, by auowry, or action of debt, for rents and seruices reserued vpon the same leases, being due afore the same recoueries, & like actions for wast done after the same recoueries, as the lessour might haue had, if no such recouery had beene had. Furthermore, no Statute staple, statute Marchant, nor execution by Elegit, shall be auoyded by any such fained recouerie, but like remedy shall be had to auoide and falsifie the said recouerie, as is ordained for the farmour or lessée for terme of yeares. Auowry of action or debt.

Of Tythes, and how they shall be recouered, enacted An. 32. H. 8. Chap. 41.

ALl persons shall truely pay their Tithes, and Offerings, according to the laws, full customes and vsages of Parishes and places where such Tythes or duties bee due. And if they doe wilfully withhold any parcell of them, the partie, whether he be Ecclesiasticall, or lay,

lay, that should haue them, may conuent such persons before the Ordinary, his Commissary, or other competent Minister or Judge of the place where such wrong shall bee done, according to the Ecclesiasticall Lawes. And in euery such case or suit, the same Ordinary or Judge hauing the parties, or their procurator before him, shall proceede to the determination thereof ordinarily or summarily, according to the course of the said Lawes, and thereupon shal giue sentence according.

And in case any of the parties of any matter concerning that suit doe appeale from the sentence & diffinitiue iudgement of the said Judge, then the same Judge forthwith vpon appellation made, shall adiudge to the other partie the reasonable costs of his suite, and shall compell the same party appellant, to pay the same by compulsary processe & censure of the said lawes, taking suerty of the other party to whome such costes shall be adiudged, to restore the same to the appellant, if afterward the principall cause of that suite of appeal shall bee adiudged against him. And so euery Judge Ecclesiasticall, shall iudge costes to the other party vpon euery appeale to bee made in any suite or cause of subtraction or detention of any tythes or offering, or in any other suite to bee made concerning duties of tythes or offerings.

And if any persons after such sentence giuen against them, shall obstinately refuse to pay their tythes or duties, or such summes of mony so adiudged wherein they bee condemned, then two Justices of the peace of the same Shire whereof

whereof one to bee of the Quorum, shall vpon certificat or complaint to them made in writing by the Iudge that gaue the sentence, cause them to be attached and committed to the nert Iaile, there to remaine without bayle or mainprize, till they shall haue found sufficient suerties to bee bound by recognisance, or other wise, before the same Iustices to the Kinges vse for the performance of the said iudgement.

Prouided, that no person shall bee sued or otherwise compelled to pay any tithes for anie landes, tenements, or hereditaments, which by the lawes of this realme are discharged, or not chargeable with the payment of any such tithes.

Also this act shall in no wise binde the inhabitants of London, and Suburbs of the same, to pay their tythes & offerings within the same Citie and Suburbs, otherwise then they should haue done before.

Furthermore, if any hauing an inheritance, freehold, terme or interest, in any parsonage, vicarage, portion, pencion, tythes, oblations, or other Ecclesiasticall profit, made or to bee made temporall, or admitted to bee in temporall hands by the lawes or statutes of this realme, be disseised or otherwise put from the same, or any other person claiming to haue interest therein, the person so disseised or wrongfully put from his saide right or possession, his heyre, wife, and other to whom such wrong shall be done, may haue remedie in the Kings temporall Courts, as the case shall require for the recouery thereof, by writs originall of Præcipe qd' reddat, assise of nouel disseisin, Mortdancester, Quod ei deforceat, writs

of

of dower, or other writs originall to be graunted in the chancery, of euery such personage, vicarage, portion, pension, or other profit Ecclesiasticall, according to the nature of the suit thereof. And writs of couenant & other writs for fines to be leuied, & all other assurances to bee made of any such parsonage or profits ecclesiasticall, shall be deuised & granted there, like as hath bin vsed for fines to bee leuied, and assurance to be had of lands or other hereditaments, & all iudgements giuen vpon such writs originall granted for any the premisses, and all fines leuied & knowledged in any of the kings said courts thereof, shall bee of like force as iudgement giuen, and fines leuied of lands, tenements, and hereditaments.

Of Mortuaries, enacted An. 21. H. 8. Chap. 42.

NO person spirituall, their farmours or baylifes, shall call any person before anie iudge Spirituall, for the recouery of any Mortuaries, more then is hereafter mentioned, vpon paine to forfeit for euery time, so much in value as they shall take aboue the summe here limited, and ouer that 40 s. to the partie grieued, for which he shall haue an action of debt by writ, bil, or information, wherin no wager of law, essoine, nor protection, shall be allowed.

First no Mortuary shalbe taken of any which at his death hath in moueable goods vnder the value of ten markes. Also no mortuarie shall be taken but onely where Mortuaries haue beene vsed to bee paid, and there after the forme hereafter mentioned. Nor in no mo places but one, that

that is to wit, there where his most abiding is, and there but one. Nor no person shall take for the Mortuary of any person being at his death, of the value of ten marks aboue his debts paid, and vnder 30. li. aboue 3. s. 4. d. And of the value of 30. li. and vnder 40 not aboue 6. s. 8. d. And of the value of 60. li. or aboue, of any summe whatsoeuer it be, not aboue 10. s.

Also no Mortuary shall be asked nor paid for any woman couert baron, or childe, or any person not keeping house, or for any wayfaring man but the mortuaries of such wayfaring men be answerable in that place where they had their most dwelling at the time of their death.

Neuertheles such spirituall person may take any thing, which shall be disposed or bequeathed to him, or to the high aultar of the Church.

Also nothing shall be taken for Mortuary in Wales, nor in the Marches of the same, nor in Calis or Barwick, or the Marches of the same, but only in such places of the same, where Mortuaries haue bin accustomed to be paid, & there but only after the forme aboue specified. Prouided that the Bishops of Bangar, Landake, S. Dauids & S. Asse, and the Archdeacon of Chester, may take such Mortuaries of the Priests within their dioces and iurisdictions, as hertofore haue bin accustomed. Prouided also, that in such places where Mortuaries haue bin accustomed to be taken of lesse value, none shalbe compelled to pay any other Mortuary or more for any Mortuary, then hath bin accustomed, nor no mortuary there shalbe demanded of any person exempt by this act, vpon paine afore limitted.

Of Discontinuance.

Chap. 43.

IT is called a discontinuance by the lawes of England, where he that hath the possession of landes or tenements for the time present, and yet not hauing the fee simple in himselfe, nor in his owne right onelie, maketh an alienation of the same to another, by reason whereof hee that should haue them after him, and which then hath right vnto them, cannot enter, but is driuen to his remedie by way of action, in such wise that the said landes bee not vtterly shifted and gone from such person or persons as haue right vnto them; but bee all onely discontinued for a time, till the person which after the death of such discontinuer hath right vnto them, doe continue and bring them home againe, not by entrie, but by suite and way of action. As for example, a tenaunt in tayle, of certaine landes doth enfeoffe an other in the same, in fee simple or fee tayle, and hath issue and dieth, his issue cannot enter into the lands though he hath title and right vnto them, but is put to his action, which is called a Formedon in the descender. And if such tenant in tayle which maketh such a feoffement, hath no issue at time of his death, it is yet neuertheleſſe a discontinuance to him which is eyther in the reuersion or in the remainder, so that neither the one nor the other can enter but be driuen to their action, he in the reuersion to his Formedon in the reuerter, and he in the remainder to his Formedon in the remainder.

Formedon in the descender.

Formedon in the reuerter or remainder.

In like manner if a Bishop doth alien landes which be parcell of his Bishoprycke and dieth, this

this is a discontinuance to his successour, forasmuch as hee cannot enter, but is driuen to his writ of Entrie sine assensu Capituli.

Entrie sine assensu Capituli.

Semblable, if a Deane be sole seised of lands in the right of his Deanry, and maketh such an alienation, this is a discontinuance to his successour. Also if the Master of an hospitall alieneth any lands of his hospitall, that is a discontinuance, & his successor cannot enter, but is put to his writ, De ingressu sine assensu confratrum & sororum.

Ingressu sine assensu confratrum, & sororum.

But if a Parson, or a Vicar of a Church, will alien any of his glebe landes to another in fee simple, or fee tayle, and dyeth, or resigneth his benefice, this is no discontinuance to his successour, but he may very well enter, notwithstanding such alienation made by his predecessour. And the highest writ that a Parson can haue, if his predecessour hath aliened his glebe land, or lost it by default, or reddition, is a Iuris vtrum. And furthermore note, that no tenant of the land can by his or their act discontinue ye right of him in the reuersion, vnlesse it be by feoffement with liuery & seisin, or else by a release with warranty.

And note, that such things as passe by way of graunt by deede without liuery and seisin, cannot be discontinued, as an aduowson, common, or a villain in grosse, reuersion rent charge, common for beasts certaine, and such other like.

Also yee shall vnderstand, that in the 32. yeare of king Henry the 8. it was enacted, that no fine, feoffement, or other act to be made or suffered by the husband onely, of any landes or tenements, being the inheritance or freehold of his

his wife, during the couerture betweene them, should bee any discontinuance thereof, or be preiudiciall or hurtfull to the saide wife, or to her heyres, or to such as should haue right, title, or interest to the same by the death of such wife, but that the same wife, and her heyres, and such other to whom such right should appertaine after her decease, may then lawfully enter into al such lands and tenements, according to their rights and titles therein.

How recoueries by collusion against tenants for terme of life, is no discontinuance, enacted An. 32. H. 8. Chap. 44.

WHere diuers persons seised of landes and hereditamentes, as tenants by the curtesie of England, or otherwise onely for terme of life or liues, haue heretofore suffered other persons by agreement or couine betweene them had to recouer the same against them in the kings court, by reason whereof, they to whome the reuersion or remainder thereof hath belonged, haue after the deaths of such tenants been driuen to their actions for the recontinuance and obtaining of the said landes and tenements so recouered, and sometime haue been clearely disherited of the same: It is enacted, that all such recoueries hereafter to be had by agreement of the party, or by couine, or against any such particular tenant of lands, or hereditaments, whereof he is, or hereafter shal be seised, as tenaunt by the curtesie of England, tenaunt in tayle after possibilitie of issue extinct,

or

or otherwise for terme of life, shall from hencefoorth as against such persons to whome the reuersion or remainder shall then appertaine, and against their heires and successours be clearely void Prouided that this act extend not, to any person that shall by good title recouer any hereditaments without fraud or couine against any such particular tenant, by reason of any former right or title, nor yet to auoide any recouery to be had against any such particular tenant by the assent & agreement of those in the reuersion or remainder, so that such assent and agreement do appeare of record in the kings Court.

How wrongfull disseisin is no descent in the law, enacted Anno 32. H. 8.

Chap. 45.

WHere diuers persõs haue by strength & without title, entered into landes & tenements, & wrongfully disseised and dispossessed the rightfull owners & possessours thereof, & so being seised by disseisin, haue thereof died seised, by reason of which dying seised, the parties that were so disseised & dispossessed, or such other persons as before such descent might haue lawfully entred into the saide lands & tenements, be thereby clearely excluded of their entry into the land, and put to their action for their remedy and recouery thereof: It is enacted, that the dying seised hereafter of any such disseisour, hauing no right or title therein, shall not be deemed any such descent in the law, as to take away the entrie of such persons or the heires, which at the time of the said descent had

good title of entry into the ſame. Except that ſuch diſſeiſor hath had the peaceable poſſeſſion of his landes or tenements whereof he ſhall ſo dy ſeiſed, by the ſpace of fiue yeeres next after the diſſeiſin by him committed, without entry or continuall claime, by ſuch as haue lawfull title thereunto.

The limitation of Preſcription enacted Ar. 32. H. 8. Chap. 46.

NO perſon ſhall ſue or maintaine any writ of right, or make any title or claime to any lands, tenements, rents, annuities, commons, pencions, portions, corrodies, or other hereditaments, of the poſſeſſion of his auncеſtours or predeceſſours, and declare any further ſeiſin or poſſeſſion of his auncеſtour or predeceſſour, but onely of the ſeiſin or poſſeſſion of his auncеſtour or predeceſſour, which haue been ſeiſed of the ſame within ſixty yeares, next before the teſte of the ſame writ, or next before the ſaid title or claime ſo to be ſued.

Limitation of 60. yeeres.

Alſo, none ſhal ſue or maintaine any Aſſiſe of Mordaunceſtour, coſinage, tayle, writ of Entry vpon diſſeiſin, done to any of his auncеſtors or predeceſſors, or any other action poſſeſſary vpon the poſſeſſion of any of his auncеſtors or predeceſſor, for lands or hereditaments of further ſeiſin or poſſeſſion of them, but only his ſeiſin or poſſeſſion which was ſeiſed thereof within 50. yeeres next before the teſte of the originall of the ſame writ. And none ſhall maintaine action for lands or other hereditaments vpon his owne ſeiſin or poſſeſſion therein, aboue 30. yeares next before the teſte of the originall of the ſame writ.

Limitation of 50. yeeres.

Limitation of 30. yeeres.

Item,

Item, none ſhall make any auowry or coniſance for a rent, ſuit, or ſeruice, & alledge any ſeiſin of the ſame in his auowry or coniſaunce in poſſeſſion of his anceſtors or predeceſſors, or in his owne poſſeſſion, or in the poſſeſſion of any other, whoſe eſtate he ſhall claime to haue aboue 50. yeares next before the making of the ſaid auowry or coniſance. Moreouer, all Formedons in reuerture, Formedons in remainder, & Scire facias vppon fines of landes or other hereditaments to be ſued, ſhal be taken within 50. yeeres next after the title of action fallen. And if any do ſue any of the ſaid actions or writs for lands or other hereditaments, or make any auowry, coniſance, preſcription or claime for any rent, ſuit, ſeruice, or other hereditaments, and if he proue that he or his anceſtors or predeceſſors were in actuall poſſeſſion or ſeiſin therein, at any time within the yeeres before limitted, if the ſame be trauerſed or denied by the party plaintife, demaundant or auowant, or by the party tenant or defendant, he and his heires ſhal from henceforth be vtterly barred for euer, of euery the ſaid writs, actions, auowries, coniſance, preſcription title & claime hereafter to be ſued or made for the ſame lands or other the premiſſes, for which ſuch action, writ, auowry, coniſaunce, title, or claime hereafter ſhall be ſued or made

Auowry.

Barre.

Prouided, that all ſuch perſons which now haue any of the ſaid actions, writs, auowries, Scire facias, coniſaunce, preſcription, title, or claime depending, or that hereafter ſhall ſue or bring any of the ſaide writs, or actions, or make any of the ſaide auowries, coniſances,

preſcription, titles, or claime, at any time before the feaſt of the aſcenſiō of our Lord, which ſhall be in the yeare of our Lord, 1546. ſhall alledge this ſeiſon of their auncеſtors, or predeceſſors, or their owne poſſeſſion & ſeiſon, & alſo haue all other like aduātage in the ſame writs, actions, auowries, coniſances, preſcriptions & claimes, as they might haue had before the making of this ſtatute. Prouided alſo, that if any perſon be now within the age of 21. yeares, or couert baron, or in priſon, or out of this Realme, now hauing cauſe to bring any of the ſaid writs, or actions, or to make any auowries, coniſaunces, preſcriptions, or claimes, it ſhall bee lawfull to ſuch perſon, to ſue or bring any of the ſaid actions, or to make any of the ſaid auowries, conyſaunces, titles or claimes, at any time within fiue yeares next after ſuch perſon now beeing within age, ſhall accompliſh the age of 21. years, or now being couert baron, ſhall be ſole, or now being in priſon, ſhall be at their liberty, or now being out of this Realme, ſhall come and bee within this Realme. And that euery ſuch perſon in their ſaid actions, auowries, coniſances, titles, or claims to be made, ſued, or commenced, within the ſaid fiue yeeres, ſhall alledge the ſeiſon of their auncеſtors or predeceſſors, or of their owne poſſeſſion, or of the poſſeſſion of thoſe whoſe eſtate they ſhall then claime. And alſo within the ſame fiue yeres ſhall haue like aduāntage in the ſame, as they might haue had before the making of this act.

Whether eſtate ſhall take effect

Prouided alſo, that if the ſaide perſons now being within age, or couert baron, in priſon, or

out

out of this Realme, do die within age, or being couert or in priſon, or out of this realme, doe deceaſe within 6. yeares next after they ſhall accompliſh their full age, or ſhall be at large within this realme, or ſhal become ſole and no determination or iudgement had of ſuch title, actions, or rights ſo to the accrewed, then the next heire of ſuch perſons ſhall enioy like aduantage, to ſue, demaund, auowe, declare, or make their ſaid titles, claimes, or preſcriptions, within fiue yeares next after the death of ſuch perſons, as the ſaid infant after his full age, or the ſaid woman couert after the death of her huſband, or the ſaid perſon being out of this Realme, after his repair or comming into the ſame, or the ſaid perſon impriſoned after his enlargement and comming out of priſon, might haue had within fiue yeares then next enſuing, by force of the prouiſion laſt before rehearſed.

Prouided alſo, that if any perſons before the ſaid Feaſt of the Aſcention, ſue any of the ſaid actions, or make any auowry, title or claime, and the ſame happen by the death of any the parties thereunto, to bee abated before iudgement or determination thereof had, then the ſaid perſons, being demaundants or auowants, or making any ſuch conuſance, preſcriptiõ, title, or clayme, being then aliue: & if not, then their next heires may commence their action, and make the auowry, conuſance, or clayme vpon the ſame matter, within one year next after ſuch ſuite abated, and ſhall haue like aduantage to ſue, demaund, auow, declare, or make their ſaid titles, claimes, or preſcriptions, within the

ſaid one yeare, as the demaundants in ſuch writ or ſuite abated, or as ſuch as did anowe or make conſiance, tytle, clayme or preſcription, might haue enioyed in the former action or ſuite.

Attaint vpon falſe verdict.

Prouided furthermore, that if any falſe verdict hereafter bee giuen in any of the ſaide actions, ſuites, anowries, preſcriptions, titles or claymes, then the partie grieued may haue his attaint vpon euery ſuch verdict, and the plaintife in the ſame attaint vpon iudgement for him giuen ſhall haue like recouery, execution and other aduantage, as heretofore hath been vſed.

Of Fines. Chap. 47.

FInes haue their name, becauſe they make a finall ende and determination of all ſuites, ſtrifes and debates betweene men. For the due leuying whereof, it was enacted in the fourth yeare of King Henry the ſeuenth, that they muſt be ſolemnly before the Iuſtices of the common place, read and proclaimed the ſame Terme, and three Termes next following the ingroſſement, at which time all the plees muſt ceaſe. And ſuch Fines ſhall bee a ſufficient barre and diſcharge againſt all perſons ſauing women that bee couert baron, if ſuch women bee not priuie to the ſame Fine, or ſuch as bee within age, in priſon, out of the Realme, or out of their right mindes. But theſe Fines ſhall not conclude, ne barre all Strangers which haue right to enter or to haue action, if they come within fiue yeeres after ſuch Proclamati-

ons

ons made, or (in case the cause of action falleth vnto them, after the fine so duely leuied) if they come and commence their action and suit within fiue yeres next after such cause of action to them accrued. And they may sue against the takers of the profits. But if they that haue right thereto be within age, in prison, couert baron, or out of the realme, or not in their right memory, then their title or entrie shall be saued vnto them till they be full of age, out of prison, discouert and sole, within the realme, or of right mind: and then within fiue yeeres after, their action or entrie must be sued or made with effect.

Also by the said statute it shall be a good plea for all strangers, to say, that they that were parties to the fine, nor none other to their vse, had any thing in the tenements or lands at the time of the leuying of the fine.

Furthermore, in the 32. yeare of this king, for the auoyding of certaine doubts and ambiguities, it was enacted, that all fines, aswell heretofore leuied, as hereafter to be leuied, according to the said statute of Henry the 7. by any person of the full age of 21. yeeres, of any landes or other hereditaments, being before the fine leuied, in any wise tayled vnto him, or any of his auncestours, in possession, reuersion, remainder, or in vse, shall be immediately after the same fine leuied, ingrossed, and proclamation made, a sufficient bar and discharge for euer, aswell against him, and his heires, clayming the same only by force of any such entayle, as against all other to their vse, so that the same fines bee not leuied to any woman

after the death of her husband, contrary to the statute made the 11. yeare of Henry the seuenth, of lands and tenements of the inheritance or purchase of her husband, or of any of his auncestors giuen to her in dower, for terme of life, or in taile, in vse, or in possession. Except also all fines leuied, or to bee leuied, of any such landes or hereditaments by the owners thereof, by any speciall act of Parliament made sith the saide fourth yeere of Henry the 7. bee restrained from making any alienations, discontinuances, or other alienations of the same. Also of such lãds as bee now in suite and variance in any of the kinges Courts, or whereof any euidences bee now in demand in the Chauncery, or which bee already recouered. Except also fines leuied, or to be leuied by any person, of lãds or tenements, graunted to him, or to his auncestors in taile, either by the kings Letters patents, or by vertue of any act of Parliament, wherof the reuersion is in the king. And confirmed in the 34 yeare of king H. the 8.

Of Testaments or last Willes.

Chap. 48.

Diuision.

TEstamentum in Latine, is as much to say as mentis testatio, that is, a declaration or witnessing of a mans minde. And there bee two sorts of testaments. The one is called Testamentum scriptum, that is a written Testament, or last will by writing, and the other is called Testamentum nuncupatiuum, a testament nuncupatiue, which is when a man doth expresse by mouth his last will and

Written testament.

The testament nuncupatiue.

and testament without writing, by calling before him certaine of his neighbours, in whose presence he doth signifie by words his last mind and will. And this for the most part men vse to doe, when for feare of suddennesse of death, they dare not abide the writing of their will. And this will (vnlesse it be in certaine cases) is as strong and as sure, as is a testament, or last will put in writing, and sealed with the seale of the testator.

Also though a Testament by writing be not sealed with the seale of the testator, yet is the testament good and effectuall in the law.

And yee shall also marke, that where a man maketh once his Testament and will, and afterward maketh an other will by words, if his last will be proued before the Ordinary, and by him put in writing, and insealed with his seal, such last will shall auoid the first will, vnlesse it be in special cases. And so alwaies the latter will and Testament shall auoid the former.

Finally, by an act made the 21. yeare of King Henry the eight, it was ordained, that where part of the Executors named in the testament wherein any lands or tenements bee willed to bee solde by them refuse to take vpon them the administration, and the residue doe take the charge and administration vpon them, in this case all bargaines and sales in the saide landes made onely by those executors that take the administration of the testament vpon them, should be as good and effectuall, as if all the residue of the executors so refusing had ioyned in the making of the bargaine and sale.

The

The difference betweene Executors and Administrators.

Chap. 44.

EExecutor is, when a man maketh his testament and last will, and therein nameth the person which shall execute his Testament, then he that is so named, is his executor, and such an executor shall haue an action against euery debtor of his testator. And if the Executors haue assets, that is to say, sufficient in their hands, then shall euery one to whom the testator was in debt, haue action against the executor, if hee haue an obligation or specialty to shew. But in euery case where the testator might wage his law, there no action lyeth against the executor.

Assets in the hands of the executors.

Administrator is he to whom the Ordinarie committeth the administration and bestowing of the goods of a dead man, for default of an executor. And actions shall lie against him, and for him as for an executor, and he shall be charged to the value of the goods of the dead, and not further, if it be not by his false plea, or for that he hath wasted the goods of the dead. But if the Administrator die, his executors be not Administrators, but it behoueth the Ordinary to commit a new Administration Howbeit if a stranger, I meane him that is neither executour named in the Testament and last will, nor yet Administrator appointed by the Ordinary. will take the goods of the dead and minister of his owne head and minde. without lawfull authority. this person shalbe charged and sued as an executor, and not as an administrator in an action which is brought against him by any creditor. But if the Ordinary make a letter ad

Executor of his own wrong.

colligendum

Colligendum bona defuncti, hee that hath such a letter is not administrator, but the action lieth in this case against the Ordinary, as well as if he tooke the goods by his owne hand, or by the hand of any other his seruant, by any other commaundement.

An act of the probate of Testaments, made An. 21. H. 8. Chap. 50.

NOthing shall be taken by any haning authority to take probation, insinuation, or approbation, of any Testament where the goods of the Testator doe not amount aboue the value of C. s. except to the scribe for writing thereof vi. d. And for the Commission of administration of the goods of any dying intestate, not being likewise aboue C. s. vi. d. Also none hauing power to take probate of Testaments, shall refuse to approue Testaments being lawfully offered vnto them in writing with wax thereto affixed readie to bee sealed, so that they be lawfully proued before the same ordinary to be true. And when the goods of the testator doe amount aboue an C. s. and not exceede xl. li. none shall take for the probation, registring, sealing and writing of any such Testament, aboue 3. s. 6. d. whereof to bee to them that haue authority to take the probation, 2 s. 6. d. and the other 12. d. to the scribe for registring.

And where the goods amount aboue xl. li. then only v. s. to be taken: whereof to be to them that haue authority to take the probation 2. s and 6 d, and the other 2. s. 6. d. to the scribe for

for the registring, or els if hee refuse that 2. s. 6. d. then he to haue for euery 100 lines, euery line containing in length 10 inches, a penny.

And they that haue authority as is aboue said, shall approue, insinuate, seale, and register the testaments, & deliuer them, sealed with the seale of their Office, to the executors, for the summe aboue said, & that with conuenient speed, without any frustratory delay.

And if any person die intestate, or the executors refuse to proue the testament, then they hauing authority as is aboue said, shall graunt the administration of the goods to the widdow of ỹ person deceased, or to the next of kin, or to both, after their discretion, taking surety of them for the true administration of the goods and debts, which they shalbe so authorised to minister. And where one or diuers claime the administration, as next of kin, which bee egall in degree of kinred, or where any one person desireth the administration as next of kin, where indeed diuers persons bee in equality of kinred, then in any such case the ordinary shall be at liberty, to take one or moe making request, where diuers require the administration: or where but one or moe of them, & not all being in like degree, make request, thē the ordinary shal admit the widow, and him or them only making request, or any of them, taking nothing for the same, where the person deceased died not worth a C s. And if he died worth C s, & not aboue xl. li. then xx s. vi d: onely to be taken. And the executor or administrator calling to him the debtors, two at the least, or such persons to whom any legacy was made

made, and if they refuse, then two nert of kinne to the person deceased, and in their default, two other honest persons shall by their discretions make a true inuentory indented of all the goods, which persons swearing before the Bishop or his officers to be true, shall deliuer the one part thereof vnto them, and the other keepe himselfe. And none hauing authority to take probate of testaments, vpon paine contained in this Statute, shall refuse to take any such inuentory presented or tendred to them. Inuentory of goods.

Prouided, if any person shall dispose or will by his testament, any lands or hereditaments to be solde, that the mony or profits of the same, bee accounted for goods or chattels.

And they hauing the authority aboue said, vpō the deliuery of the seale & signe of the Testator, shall cause the same to be defaced, & incontinent shall deliuer to ꝑ executor without any claim: and if any require a copy of the testament, & inuentory, then they hauing authority or their ministers, shal without delay deliuer them a copy, taking therfore, or els for the registring of the same as before, for euery ten lines. 1. d.

Prouided, that where they hauing authority as is aboue said, haue vsed to take lesse for the probate of testaments, or other things concerning the same, then is heere specified, they shall take as they did before this act.

Now if any that haue authority to take probate of testaments, or their ministers, doe attempt against this act, they shall forfeit for euery time to the party grieued as much money as they shall take contrary to this act. And ouer that

that x.li. the one halfe to the King, the other to the party grieued, that will sue by action of debt, bill, information, or otherwise in any of ỹ kings courts, wherein no essoin, protection nor wager of the law shall be allowed. And euery of them shalbe charged for himselfe, and for none other.

Prouided, that euery one hauing authority aboue said, may call before them euery person so named executors, to the intent to proue and refuse the Testament, and to bring inuentories, and to do euery other thing concerning the same as they might before this act, so neither they nor their ministers shall take aboue the fees limited by this act.

How lands and tenements may be by testament or otherwise disposed, enacted An. 32. H. 8.

EVery person hauing landes or other hereditaments holden in socage, or of the nature of socage tenure in chiefe, and not hauing any lands or hereditaments holden of the King by knights seruice, or socage tenure in chiefe, or of the nature of socage tenure in chiefe, nor yet of any other person by knights seruice, may giue, dispose & deuise, as well by Testament in writing, as otherwise by an act lawfully executed in his life, all his said lands or hereditaments, or any of them.

And euery person hauing lands or other hereditaments holden of the King in Socage, or of the nature of socage tenure in chiefe, and hauing also any other lands or hereditaments holden of any other person in socage, or of the nature

ture

ture of socage tenure, and not hauing any hereditaments holden of the king, or of any other by knights seruice, may from the said time giue & deuise, aswel by testament in writing, as otherwise by any act lawfully executed in his life, all and euery of them at his pleasure: sauing to the king all his right of primer seisin and reliefes, and also all other rights and duties for tenure in socage, or of the nature of socage tenure in chiefe, as heeretofore hath been accustomed, the same to bee taken and sued out of the Kinges hands by the person to whom any such landes shall be disposed or deuised, in like manner as hath been vsed by any heyre or heyres before the making of this statute. And sauing and reseruing also fines for alienations of such lands and hereditaments holden of the King in socage, or of the nature of socage tenure in chiefe, wherof shall be any alteration of freehold or inheritance made by will or otherwise, as is afore said. Primer seisin. Reliefes.

Item, all persons hauing lands or other hereditaments of estate of inheritance holden of the king in chiefe by knights seruice, or of the nature of knights seruice in chiefe, may giue, will, or assigne, two parts of the same, in three parts to bee diuided, or else as much thereof as shall amount to the yeerely value of two parts of the same, in three parts to be diuided in certainty and by speciall diuisions, as it may be knowne in seueralty, for the aduancement of his wife, preferment of his children, and payment of his debts, or otherwise at his pleasure. Sauing to the king aswell the wardship & primer seisin of as much as shall amount to ỹ clear yerely value of the

the third part thereof, without diminution, dower, fraud, couin, charge, or abridgement thereof, as also all fines for alienations of all such lands holden of him by knights seruice in chief, whereof shall be any alteration of freehold, or of inheritance made by will or otherwise. And euery person hauing lands or tenements of estate of inheritance holden of the king in chiefe by knights seruice, and other lands holden of him, or of any other by knights seruice, or otherwise, may giue or assigne by his testament, or otherwise as is aforesaid, two parts thereof, in three parts to be diuided, or else as much thereof as shall extend to the yearely value of two parts to be diuided in certainty. Sauing to the king, as wel the wardship & primer seisin of as much as shall amount to the yearely value of the third part, without diminution, &c. As also for all fines for alienation, as is aboue said.

Fines for alienation

Item, euery person holding lands or tenements onely, of any other then the King by knights seruice, and other lands & tenements in socage, or of the nature of socage tenure, may giue, dispose, or assure by testament or otherwise two parts thereof holden by knights seruice, or as much as shall amount to the full yearely value of two parts, and also of the lands and tenements holden by socage, or of the nature of socage tenure, at his pleasure: Sauing to the Lord of the lands and tenements holden by knights seruice for his wardship, as much therfore as shall amount to the cleare yearely value of the third part, without diminution, &c.

And euery person holding onely of the king

by

by knights seruice, but not in chiefe, and also other hereditaments of others by knights seruice, and holding also other hereditaments of any other person in socage, or of the nature of socage tenure, may giue and assure by his last will or otherwise, two parts of that is holden of the king by knights seruice, and two parts of that is holden of any other person by knights seruice, or as much of either of them as shall amount to the full yeerely value of two parts, & also all his lands and tenements so holden in socage, or of the nature of socage tenure. Sauing aswell to the king the wardship of as much as shall extend to the clear yeerely value of the third part of the same so holden of him by knights seruice, without diminutiõ, &c. As also to the Lords of whom any of the said lands been holden by knights seruice for the wardship as much of the same as shall amount to the cleere yeerely value of the third part, in manner aboue declared. And if that third part which in any of the cases aboue said, shall come to the king, doe not amount to the cléere yeerely value of the full third part of all the said hereditaments, whereof the king shall bee intitled to haue the custody or primer seisin: then the king may take into his hands as much of the other two parts of the said hereditaments, as with that of the same hereditaments remaining in his hands, shall make vppe the cleere yeerely value of the third part thereof, so to be had to him in title of wardship and primer seisin. And like benefite to bee giuen to euery Lord, of whome any such hereditament shall be holden by knights seruice, concerning

onely his third part for title of wardship.

Also al persons shall sue their liueries for possessions, reuersions, or remainders, and also pay reliefes & heriots, like as they should haue done before the making hereof. And fines for alienation shall be payed in the Chauncery vpon writs of Entrie in the post to bee obtained there, for common recoueries to bee suffered of any landes holden of the king in chiefe, in like manner as is vsed vpon alienations of landes so holden in chiefe by fine or feoffement.

Prouided, that in such cases where fines for alienation shall bee payed in the Chauncery for writs of Entrie in the post as is aforesaid, none other fine shalbe payed there for any such writs.

Item, where two or more persons hold of the king by knights seruice ioyntly to them, and to the heires of one of them, and hee that hath the inheritance thereof dyeth, his heyre being within age, the king shall haue the ward & mariage of the body of such heyre, the life of the freeholder or freeholders of the lands so holden by knights seruice notwithstanding.

Sauing to all women such right and title of dower as they ought to haue of any lands or tenements to be assigned vnto them out of the two parts of the said landes or tenements seuered from the third part, as is abouesaid, & not otherwise. And sauing also to the king the reuersion of all such tenements in ioynture, and dower, immediately after the death of such tenants, if they shall happen to die, during the nonage of the kings wardes.

Of

An. 32. H. 8.

IT is enacted, that from the first day of Julie in the yeere of our Lord 1540 all Mariages within this Church of England, contracted betweene lawful persons, as by this act we declare all persons to be lawfull that bee not prohibited by Gods law to mary, such mariages, being contracted & solemnized in the face of the church, and consummate with bodily knowledge of fruit of children, or childe being had therein betweene the parties so maried, shall be deemed and taken to be lawfull, good and indissoluble, notwithstanding any precontract of matrimony not consummate with bodily knowledge eyther of the persons so maried, or both shall haue made with any other before the time of contracting that mariage which is solemnized and consummate, or whereof such fruit is ensued or may ensue as afore, and notwithstanding any dispensation, prescription, law, or other thing granted or confirmed by act or otherwise. And that no reuersion or prohibition (Gods law except) shall trouble, or impeach any mariage without leuiticall degrees. And that no person shall after the said first day of July aforesaid, be admitted to any of the spiritual courts within this the Kings realme, or any his other lands and dominions to any proces, plee, or allegation, contrary to this act.

FINIS.

This Table doth readily ſhew *where the principal matters contained* in this Treatiſe are to be found; the letter *A ſignifying the firſt page or ſide: and* the letter B the ſecond page *or ſide.*

Double

Franke

Finis Tabulæ.